

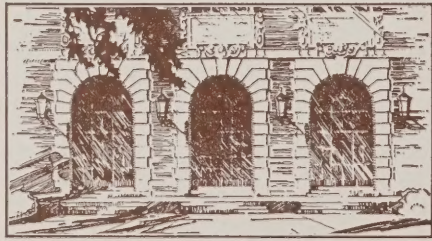




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THE  
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*Selden Society*

*περὶ παντὸς τὴν ἐλευθερίαν*

VOLUME XXII  
FOR THE YEAR 1907



# Selden Society

FOUNDED 1887

TO ENCOURAGE THE STUDY AND ADVANCE THE KNOWLEDGE  
OF THE HISTORY OF ENGLISH LAW.

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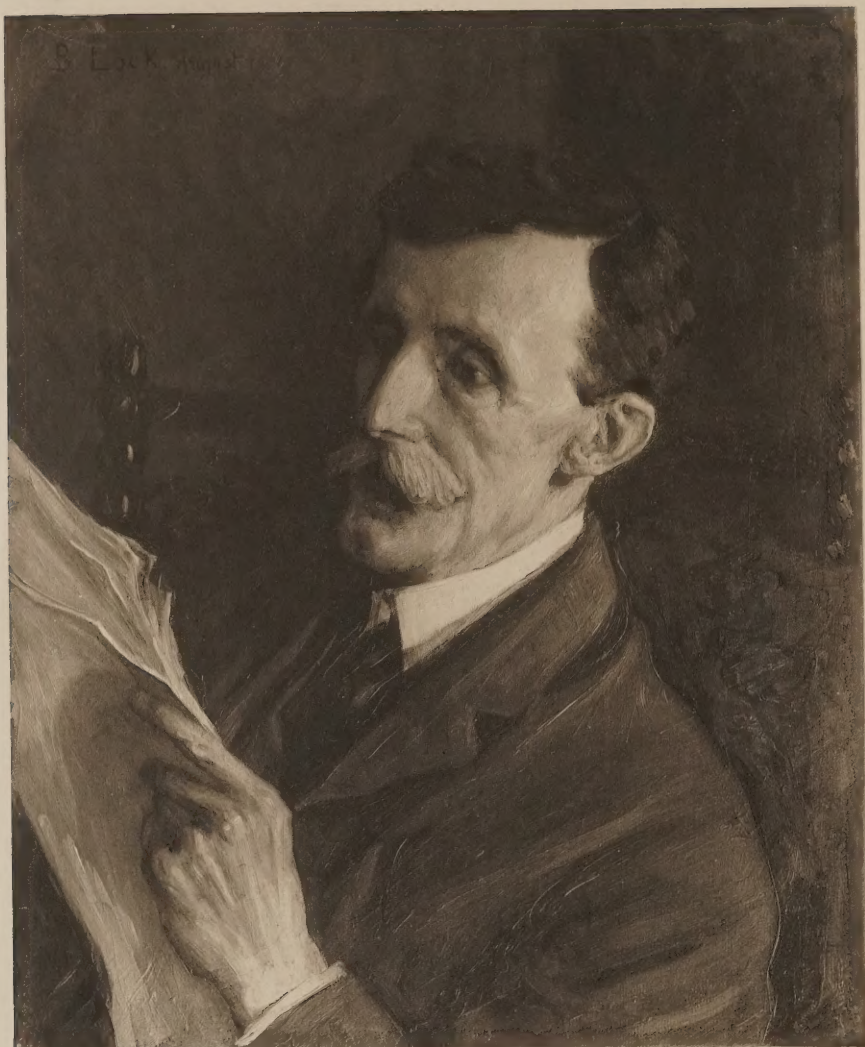
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# Selden Society

## YEAR BOOKS OF EDWARD II.

VOL. IV.

3 & 4 EDWARD II.

A.D. 1309-1311

EDITED

FOR THE SELDEN SOCIETY

BY

THE LATE F. W. MAITLAND

AND

G. J. TURNER

*He [Serjeant Maynard] had such a relish of the old year-books that he carried one in his coach to divert him in travel, and said he chose it before any comedy.*

ROGER NORTH

*C'est toute la tragédie, toute la comédie humaine que met en scène sous nos yeux l'histoire de nos lois. Ne craignons point de le dire et de le montrer.*

ALBERT SOREL

LONDON

BERNARD QUARITCH, 11 GRAFTON STREET, W.

1907

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## PREFACE

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THE year 1907 was the twenty-first anniversary of the founding of the Selden Society. Professor Maitland had at one time planned that it should be marked by the production of a special volume. The particular proposal had to be abandoned ; but fate has willed that the idea should be carried out by the issue for that year of this, his posthumous work. It has been thought appropriate that it should contain a short memoir and a portrait. Many biographical notices have appeared, and others may yet appear. It will be sufficient here to give a brief account of his relations with this Society, prefaced by a bare outline of his earlier life.<sup>1</sup>

Frederic William Maitland was the only son of John Gorham Maitland, who was the son of Samuel Roffey Maitland. Grandfather, father, and son were all at Cambridge, and all were called to the Bar—the first at the Inner Temple, the other two at Lincoln's Inn—but none of them remained long in practice. Samuel Roffey was soon ordained, became librarian at Lambeth, and was the author of well-known works which, according to his grandson, did for ecclesiastical history much of what he himself aimed at doing for legal history. John Gorham, who was seventh wrangler, third classic and chancellor's medallist, a fellow of Trinity, and also a considerable German scholar, became secretary to the Civil Service Commission. He married Emma Daniell, the daughter of John Frederic Daniell, a distinguished professor of natural science at King's College, London, and the recipient

<sup>1</sup> For the facts of his early life, use of an unpublished manuscript memoir written by herself.  
acknowledgment is due to his sister,  
Mrs. Reynell, who has permitted the

of three medals for original discoveries from the Royal Society. Frederic William Maitland was thus by descent well equipped in the faculties of literature, language, history and science.

He was born on the 28th of May, 1850, at 53 Guilford Street, London, but his parents shortly afterwards removed to 39 Woburn Place, which was his home for many years. His mother died in December 1851, and his father in April 1863. After his mother's death her sister, Charlotte Louisa Daniell, took her place in charge of him and his two sisters, which upon his father's death became a sole charge. Maitland was educated in his early years by his father and aunt; and was afterwards at Mr. Peter's preparatory school at Brighton. He went to Eton in 1863, and to Trinity College, Cambridge, in 1869. There his first year was occupied with athletics, music, and mathematics; he won a 'blue' as a freshman by running for the University in the three-mile race against Oxford. After this he abandoned mathematics, and under the influence of Henry Sidgwick took up moral science. In this subject he became a scholar of Trinity, and in 1872 was senior in the Moral Science Tripos. He took his degree in January 1873, and in the same year won a Whewell Scholarship in international law. He was always a good speaker, and was president of the Cambridge Union. In 1872 he became a student of Lincoln's Inn, where he was a pupil of Mr. Upton and Mr. B. B. Rogers; he was called to the Bar in 1876, and remained at Lincoln's Inn for seven or eight years, during which he acted as 'devil' for Mr. Rogers. His spare time was fully occupied; he was restudying German, translating Savigny, writing on Herbert Spencer in 'Mind,' lecturing at Rochdale on political economy, and at Liverpool on law, writing 'Justice and Police' for the English Citizen Series, and travelling, mainly on foot, at home and also abroad and especially in Germany and Switzerland. Three friends made during these years largely influenced his future career—Leslie Stephen, Frederick Pollock, and Paul Vinogradoff. It was the influence of the latter which attracted him to the study of the first-hand evidence of the law of the middle ages. The first fruits of this study was the publication in 1884 of the volume on 'Gloucester Pleas of the Crown'—a study of his own county; for he had inherited from his grandfather



a small landed estate in Gloucestershire. In the same year he finally abandoned practice at the Bar, and went back to Cambridge as reader of English Law. In 1886 he married, and in 1887 he published his edition of 'Bracton's Note Book.' In 1888 he became Downing Professor of the Laws of England, an office which he held till his death in December 1906.

It was in November 1886 that his name appeared with eleven others<sup>1</sup> upon the original proposal for the foundation of the Selden Society. This was actually formed at a meeting held in Lincoln's Inn Hall on the 29th of January, 1889, at which Lord Justice Fry presided. From the first, Maitland took a leading part in the literary work. The first two volumes for 1887 and 1888, 'Select Pleas of the Crown' and 'Select Pleas in Manorial Courts,' were wholly his. The fourth volume, for 1890, 'The Court Baron,' purports to be a collaboration by himself and Mr. Baildon (who had edited the third volume), but a glance at the introduction will show that the discovery of the Littleport Rolls there printed crowded out Mr. Baildon's proposed share, and that the volume is practically from Maitland's pen. For the next four years his name is absent, but the production of works for these years had been arranged by himself and Mr. Dove. He himself was then engaged in carrying out the objects of the Society in a different manner, namely by writing, in collaboration with Frederick Pollock, the well-known 'History of English Law.' By far the greater share of the actual production of this book also fell upon Maitland, as explained in a note appended to the preface. His attention was thus diverted from the affairs of the Society, which then fell into a state requiring the reconstitution of 1895.

Maitland was then formally appointed Literary Director, and threw himself heart and soul into restoring the reputation of the Society on the literary side, as others were doing from the point of view of finance. The publications were two years in arrear, and he took those arrears upon himself. 'The Mirror of Justices' had not advanced beyond the transcript of the original text; he made the

<sup>1</sup> The other names are: the Attorney-General (Sir Richard Webster), Montague Cookson, J. Fletcher Moulton, F. Meadows White, W. Paley Baildon,

R. Campbell, P. Edward Dove, E. Macrory, H. S. Milman, Stuart Moore and Frederick Pollock.

translation, and wrote the brilliant and somewhat sensational introduction. He also wholly wrote the volume on Bracton and Azo, which proved his mastery of mediæval Roman Law. These were the volumes for 1893 and 1894, and they were both published within a year; as also was the volume for 1895—Mr. Gross's 'Coroners' Rolls.' Publications for the next seven years were planned and entrusted to other editors and duly issued; but Maitland read in the proof every page of every volume, and was always ready with helpful criticism.

Meanwhile he himself set to work upon the great desire of his life, a new edition of some part of the Year Books, the period selected being the reign of Edward II. No one can know better than the present writer the care and forethought spent by him upon this publication before the appearance of the first volume. In addition to the search for and collation of manuscripts, it required many anxious consultations as to ways and means, both financial and literary, negotiations with the managers of the Clarendon Press (who at one time were inclined to share the venture), and prolonged discussions with the Council. Neither his professional duties nor the production of other important works during these years was allowed to interfere with his ardent promotion of this undertaking, which was beset with difficulties. It was doubted whether the Society could afford it, but by degrees during the delay a reserve sufficient to justify the effort was gradually set aside. To this Maitland himself contributed by refusing all remuneration for the 'Mirror of Justices'; and another member assisted by defraying all expenses of the volume on Bracton and Azo. But the generous annual contributions of the Inns of Court, duly husbanded, formed the bulk of the fund; without these neither could the work have been undertaken nor can it now be carried to completion. The editorial difficulty arose partly from the lack of qualified assistance; in this direction Maitland's efforts met with many disappointments. But the more serious obstacle was the frailty of his own health, which permanently broke down just at the outset of this enterprise, and necessitated his constant wintering out of England. Notwithstanding frequent attacks of illness, he mastered the difficulty by the help of photography. He always carried with



him either manuscripts or photographic reproductions necessary to enable him to continue this work abroad, and so to discharge at home in the summer months the full annual tale of his duties as professor at Cambridge. Mr. Turner rendered valuable help in searches of and extracts from the Records and otherwise.

By such means all obstacles were overcome, and the first volume of 'The Year Books of Edward II.' appeared in 1903. The brilliant introduction to that volume captivated the legal and historical authorities of England, America, France, and Germany, and assured the popularity of the series. It also guaranteed its continuity by the candour with which it expounded for the benefit of successors the tools and secrets of the trade: the language, the use of the records, the newly discovered manuscripts, and the human interest—'*toute la tragédie toute la comédie humaine*,' according to the quotation which appeared on the title-page. Other volumes followed in 1904 and 1905, and were equally successful. Although the Society had only held out the prospect of one volume in every alternate year, Maitland was eager to improve on this and to accelerate the production, more especially as the materials were becoming so abundant that the number of volumes must far exceed the original estimate. But for the year 1906 he was unable to carry out this plan owing to the necessity of his undertaking the task laid upon him of writing the biography of his old friend Leslie Stephen. This done, he had by the end of that year completed the text and translation of this the fourth volume, and had once revised the proofs. He hoped, had he lived, to publish the volume early in 1907, and to have continued without interruption a yearly issue of the series. His death has put an end for the present to this prospect; but it is hoped that it may be again realised.

It would be useless to attempt to estimate or express the loss which has fallen upon the Society by his death. His memory is to be perpetuated at Cambridge by an appropriate endowment 'for the promotion of research and instruction in the history of law and of legal language and institutions,' an object with which all members of the Society will sympathise. The substantial contributions made to this fund by the Inns of Court and the Law Society mark, better

than any words, the impression of Maitland's influence on the legal profession of his time.

This volume has been completed by Mr. Turner, who has added further notes and references to the records, compiled the appendix and indexes, and written the Introduction.

The frontispiece is a reproduction in photogravure by Mr. Emery Walker of a portrait of Maitland painted by Miss Beatrice Lock in August 1906, a few months before his death.

B. F. L.

March 1908.

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P = Brit. Mus. Harl. MS. 835

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X = Bodl. Tanner, 13

Y = Brit. Mus. Add. MS. 35116

Z = Line. Inn, 137 (2)

# INTRODUCTION

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1. The judges. 2. The two Benches. 3. The Common Bench and the Nisi Prius system. 4. The cases in this volume. 5. The Crib.

## 1. THE JUDGES.

ALTHOUGH the biographies of the judges of the reign of Edward II. scarcely fall within the scope of these Introductions, some consideration of their professional careers may yet be instructive and throw some light on the course of legal education and legal routine in the Middle Ages. We can learn, from the Year Books and our lists<sup>1</sup> compiled from the Plea Rolls, which of the judges in the reign of Edward II. had recently practised as 'narratores'; but we have not a like knowledge of all those who were on the Bench in the reign of Edward I. This is because the Year Books are still fragmentary until shortly before the accession of Edward II., the earliest of them now in print dating from the year 21 Edw. I. only. Unfortunately, too, we cannot construct exhaustive lists of the 'narratores' until the closing years of the thirteenth century. We owe these lists to the concluding words of licences to levy a fine, 'Et habet cyrograffum per *talem* narratorem suum,' which are seldom inserted on the rolls before the year 21 Edward I., and are only inserted as a matter of course a few years later. When towards the end of the reign of Edward I. we can construct full lists, and have gathered all the information possible from other sources, our first conclusion is that the 'narratores' were laymen. We have not as yet been able to find a single case of a man being at once a 'narrator' and a clerk.

<sup>1</sup> The first published list of *narratores* was constructed by Mr. L. O. Pike in 1900, and appears at the end of his

Introduction to the second part of the Year Books of Edw. III., year xvi.

Indeed, it may be said confidently that at the beginning of the fourteenth century the profession of a 'narrator' in the Common Bench was one for laymen and not for the clergy. This state of things is not surprising, for the clergy had been prohibited by the fourteenth canon<sup>1</sup> of the Council of Mayence (A.D. 813) from arguing in secular pleas except in defence of orphans or widows. The third Lateran Council held in 1179 issued a more specific prohibition. Clerks in subdeacon's or higher orders, and in minor orders, if they were supported by ecclesiastical stipends, were not to presume to be advocates before a secular judge in legal business, unless they pursued their own causes or those of the Church, or perchance on behalf of poor (*miserabilibus*) persons who could not manage their own causes.<sup>2</sup> The Constitutions<sup>3</sup> of Richard Poore, bishop of Salisbury from 1217 to 1229, contain a similar provision, which seems to have been observed faithfully.

Who were the 'narratores' of the Common Bench? First, we may notice that 'narrare' represents the French 'counter,' and 'narrator' the French 'countour,' which passed into the English language as a word of law. In a political song<sup>4</sup> written about 1325, we have:

And countours in benche that stondeth at the barre.

Selden in his 'Titles of Honor,' published in 1614, writes: <sup>5</sup>

A *countour* was (if I am not decein'd) a *Serjeant at Law*, known also then by both names. *Countours sont Serieants* (saith the Mirror of Justice) *sachans la ley del Royalm* and the Customier of Normandie: *Il est appellei Conteur que ascum est establist a parler & conter pour soy en court*. The word is interpreted by

<sup>1</sup> Quidquid plus iusto appetit homo, turpe lucrum est: munera iniusta accipere, uel etiam dare, pro aliquo saeculari quaestu pretio aliquem conducere, contentiones lites uel rixas amare, in placitis saecularibus disputare, excepta defensione orphanorum aut uiduarum, conductores aut procuratores esse saecularium rerum. Labbe, *Sacrorum Conciliorum Collectio*, 1769, tom. xiv. p. 70.

<sup>2</sup> *Chronica Rogeri de Houeden* (Rolls Series), ii. 188; *Gesta Regis Henrici* (Rolls Series), i. 236; *The Historical Works of Gervase of Canterbury* (Rolls Series), i. 287; Labbe, *Sacrorum Conciliorum collectio*, tom. xxii. p. 226.

<sup>3</sup> Nec aduocati sint clerici uel sacer-

dotes in foro seculari nisi uel proprias causas uel miserabilium personarum prosequantur. W. Rich. Jones, *Charters etc. illustrating the History of Salisbury* (Rolls Series), p. 134. On the other hand, the 'Mirror of Justices' states that a 'countour' must be neither a man of religion, nor a woman, nor within Holy Orders from a subdeacon upwards, nor a beneficed clerk with the cure of souls (Publications of the Selden Society, vii. 47). It seems, however, that the author of the 'Mirror' is not referring to the countours of the Common Bench to the exclusion of others.

<sup>4</sup> *Publications of the Camden Society* (first series), vi. 339.

<sup>5</sup> First Edition, p. 292.



*Narrator.* Often in the Plea Rolls of Hen. III. you haue *per Narratorem suum*.

It is clear that 'countour' had passed out of use as an English word in 1614. During the Commonwealth, when for a time enrolments were written in English, we find 'narrator' rendered by pleader, which is perhaps too vague a translation for us to adopt in the twentieth century. But before we follow Selden in translating 'narrator' as serjeant-at-law, we should make sure that in the fourteenth century the word denoted a member of that order of serjeants-at-law which has only recently become extinct.

It has already been observed that in the reign of Edward II. the 'narratores' of the plea rolls are the same persons as those who are reported in the Year Books as addressing the court. Now, in the sixteenth century we know that the lists of 'narratores' which we may construct from the plea rolls consist solely of serjeants-at-law who had an exclusive right of audience in the Common Bench. It is from this that it may be inferred that the *narratores* who practised in that court in the thirteenth and fourteenth centuries were also serjeants-at-law. Again, a study of the rolls makes it plain that it was not normal for those men who had become serjeants to act as attorneys, although here and there in a particular action an exception may perhaps be noticed.<sup>1</sup> Instances of professional attorneys becoming serjeants may be sought in vain. It is evident that the serjeant of the thirteenth century had learnt his law not as an attorney, but as one of the apprentices who are occasionally mentioned in the Year Books. In other words, at the end of the thirteenth century there were already two well-defined classes of lawyers—namely, on the one hand serjeants and apprentices, and on the other hand attorneys; the serjeants being chosen from the apprentices, who ultimately became known as barristers.

But when we turn to the judges we see at once that there was a third (and very important) class of lawyers, for a considerable number of the judges had never been serjeants. They were clerks in orders. In 4 Edw. II. Hervey of Staunton<sup>2</sup> and Lambert of Trikingham, justices

<sup>1</sup> This statement is based on personal observation only. The reader will notice that in the Index of Names at the end of this volume the attorneys are distinguished from other persons. Their names are not found in any of the lists of *narratores* hitherto published, nor in any which I have constructed for

later years of the reign of Edw. II.

<sup>2</sup> The Bishop of Exeter granted him a pension of forty shillings on 6 April 1309. He also collated him to a prebend in the collegiate church of St. Cranstock. *Register of Walter of Stapeldon*, pp. 249, 378.

of the Common Bench, and Gilbert of Roubiry,<sup>1</sup> a justice of the King's Bench, were clerks. Ralph of Hengham, Bereford's predecessor as chief justice, and a writer of two much-used legal tracts, was a canon of St. Paul's, as were also many of the judges of the thirteenth century. For the most part they seem to have been well qualified by training to perform their judicial duties. Ellis of Beckingham, one of the most distinguished of Edward I.'s judges, had held the office<sup>2</sup> of *custos breuium* for some years before he was raised to the Common Bench. John Bacon, another judge, of whom we shall read much in subsequent volumes, was appointed a justice of the same court in February 1313,<sup>3</sup> after a similar training of one and twenty years. The illustrious Bracton, archdeacon of Barnstaple, had noted the decisions of Martin of Pateshull, dean of St. Paul's, and William of Raleigh, treasurer of Exeter, two famous judges of the early years of Henry III.<sup>4</sup> Other clerical justices of the two benches had been placed from time to time in commissions as justices in eyre and had so gained useful judicial experience.

Although the ecclesiastical law prohibited the clergy from acting as advocates in the secular courts, the prohibition was not considered to extend to clerical work in the courts of law. Little, however, is known of the ecclesiastical status of the clerks of the chancery and the two benches in the thirteenth century. Many of them, no doubt, were in minor orders only, doorkeepers, lectors, exorcists, and acolytes,<sup>5</sup> and could quit the ecclesiastical profession at their pleasure; but a large number of them were ordained subdeacons, deacons, and priests, and were thus better qualified for ecclesiastical benefices.<sup>6</sup> In

<sup>1</sup> Gilbert of Roubiry is described as a clerk in a charter dated 23 June 1291, *Calendar of Close Rolls*, 1288-1296, p. 200.

<sup>2</sup> He was appointed to this office on 10 August 1278 (*Cal. Pat. Rolls*, 1272-1281, p. 276), and was appointed a justice of the Common Bench on 14 October, 1285 (*Ibidem*, 1281-1292, p. 196).

<sup>3</sup> *Ibidem*, 1307-1313, p. 552. He was appointed *custos breuium* on 17 April, 1292 (*Ibidem*, 1281-1292, p. 485).

<sup>4</sup> F. W. Maitland, *Bracton's Note Book*, i. 60.

<sup>5</sup> These are generally stated to be the four minor orders, but the Registers of Walter of Stapeldon, bishop of Exeter, show that the persons he ordained were of five classes: *clerici ad primam tonsuram*, *accoliti*, *subdiaconi*, *diaconi*, *presbiteri*. It would

seem that in this and other dioceses all who received the first tonsure were admitted at the same time to minor orders.

<sup>6</sup> A clerk in first tonsure could be instituted to a benefice, but the Council of Lyons (1274) provided that no one should be instituted to a parish church who was without priest's orders unless he pledged himself to take them within a year under penalty of forfeiting his benefice. Pope Boniface VIII. allowed bishops to dispense with this pledge and allow clerks seven years for study. As to this see the thesis by Miss E. K. Lyle, of the University of Pennsylvania, *The Office of an English Bishop* (1903), and the authorities there cited. A clerk in minor orders might marry, but when married was required to resign his benefice.

the thirteenth century it was recognised that the chancellor might confer all benefices in the king's gift of less value than twenty marks by virtue of his office.<sup>1</sup> In 4 Edw. II. the Council recommended the king to give orders that this patronage should be exercised in favour of the clerks of the chancery, the exchequer, and the two benches.<sup>2</sup> In spite, too, of the strict ecclesiastical laws against pluralities, the Pope allowed the king's clerks to hold several benefices in plurality.<sup>3</sup> The very large number of parochial benefices which John of Sandale, afterwards chancellor of England and bishop of Winchester, enjoyed while a clerk in the king's service, affords a good illustration of the abuse of the privilege. In 1315 he held, says Mr. F. J. Baigent, no fewer than two dignities, eight prebendal stalls, and ten rectories.<sup>4</sup> At this date the prospects of a capable king's clerk must have been no less fair than those of a serjeant. There was some distinction in rank between the lay and the clerical judges. In an ordinance of 3 Edw. II., written in French, each of the two lay judges of the Common Bench is styled Monsire,<sup>5</sup> or Monseigneur (the extension of the word is doubtful), while the four clerks are each styled Sire. On the other hand, in a writ under the king's privy seal dated 9 Edw. II., two clerical justices were each described as Monsire. It may be that an old distinction in rank was then passing out of use.<sup>6</sup>

The career of John of Benstede, one of the justices of the Common Bench in 4 Edw. II., is especially interesting. We hear of him in the middle of the reign of Edward I. as a clerk in the royal wardrobe, then one of the great departments of state. Already high in the king's favour, he more than once received the great seal in his temporary custody,<sup>7</sup> and numerous grants on the rolls of letters patent and close are stated to have been made on his information. In 1302 the king, writing to the cardinal deacon of St. Lucy, assured him that he had ordered John of Benstede his clerk, 'who stayed continually by his side,' to remind him of a promise, when an opportunity should occur for its fulfilment.<sup>8</sup> On 25 Sept. 1305 Benstede was appointed chancellor of the exchequer,<sup>9</sup> in which office he remained until 20 Aug. 1307, when he was succeeded by John of Sandale.<sup>10</sup> About

<sup>1</sup> *Calendar of Patent Rolls*, 1334-1338, pp. 61, 196.

<sup>2</sup> *Rotuli Parliamentorum*, ii. 41b.

<sup>3</sup> The Pope also permitted a certain number of beneficed king's clerks to be non-resident (*Calendar of Patent Rolls*, 1281-1292, p. 415).

<sup>4</sup> *Registers of John de Sandale* (in the Publications of the Hampshire Record Society), p. xxxi.

<sup>5</sup> *Calendar of Close Rolls*, 1307-

1313, p. 231. The editor of the *Calendar* has, however, translated the word 'monsire' as 'master.'

<sup>6</sup> De Banco Rolls, No. 176, r. 127.

<sup>7</sup> Thomas Duffus Hardy, *A Catalogue of Lords Chancellors*, pp. 14, 15, 16.

<sup>8</sup> *Calendar of Close Rolls*, 1296-1302, p. 602.

<sup>9</sup> *Calendar of Patent Rolls*, 1301-1307, p. 378.

<sup>10</sup> *Ibidem*, 1307-1313, p. 6.



this time Benstede was appointed keeper of the king's wardrobe,<sup>1</sup> which was then considered a better office than that of chancellor of the exchequer. This was but a stepping-stone in his career, as he was appointed a justice of the Common Bench by letters patent dated 6 Oct. 1309.<sup>2</sup> It cannot be said that he was well qualified by training for his new duties. Even if in his younger days he had been a clerk in one of the benches, of which we have no evidence, his long employment in other branches of the king's service would have made his earlier training of little practical value. Until he became a judge he was always described in official documents as a clerk,<sup>3</sup> but soon afterwards that description gave place to knight.<sup>4</sup> Presumably he had been in minor orders, which he abandoned when he wished to marry and could no longer hold an ecclesiastical benefice. In spite of his judicial duties, he was still from time to time employed by the king on special missions. He was sent to Rome, for example, in 12 Edw. II. to urge upon the Pope the canonization of Thomas de Chanteloup,<sup>5</sup> the late bishop of Hereford, a project first mooted in the year 1290.<sup>6</sup> If John of Benstede had acquired little experience of the common law before he was raised to the Bench, he was evidently a man of conspicuous ability. His promotion is noteworthy as showing that at the beginning of the fourteenth century a clerk who had within his reach a great position in the Church, might yet prefer the status of a knight and content himself with the office of a judge. But long judicial service on the part of a clerical justice was not always rewarded by ecclesiastical preferment. Lambert of Trikingham, a clerk, was appointed a justice of the Common Bench in Easter term of 1299, transferred to the King's Bench on 6 Aug. 1316,<sup>7</sup> and on 6 Aug. 1320 created a baron of the exchequer.<sup>8</sup> Yet he seems to have received no canonry or archdeaconry in the king's gift, and he was collated to his only prebend at Southwell by the archbishop of York.<sup>9</sup> He never took his seat in the exchequer, and on 20 Dec. 1330, not long before he died, he was described as a king's clerk.<sup>10</sup>

<sup>1</sup> He is described as keeper of the wardrobe in letters patent of 15 Nov. 1307 (*Cal. Pat. Rolls*, 1307-1313, p. 15).

<sup>2</sup> *Ibidem*, p. 193.

<sup>3</sup> On 13 Sept. 1309 the king presented a clerk to the church of Worfield upon the resignation of John of Benstede (*Ibidem*, p. 212).

<sup>4</sup> He was described as a knight in a Charter dated 12 Feb. 1311 (*Cal. Close Rolls*, 1307-1313, p. 340).

<sup>5</sup> *Foedera*, ii. 385. It appears from the royal correspondence that the cano-

nisation was only one of the matters with which his mission was concerned.

<sup>6</sup> *Dictionary of Nat. Biog.*, viii. 451.

<sup>7</sup> *Calendar of Close Rolls*, 1313-1318, p. 358.

<sup>8</sup> *Calendar of Patent Rolls*, 1317-1321, p. 504.

<sup>9</sup> *Ibidem*, 1330-1334, p. 485.

<sup>10</sup> *Calendar of Close Rolls*, 1330-1333, p. 96. In letters patent dated 30 Dec. 1329, it is stated that he was then too old to serve as a justice in eyre (*Cal. of Patent Rolls*, 1327-1330, p. 465).

In the fourteenth century clerical justices are found less frequently than in the thirteenth, but their careers are easier to trace, for the material is more abundant. If the bench of judges had continued to be in part recruited from the clergy, it is probable that English law would have been more influenced by the doctrines of the civilians and civil canonists and at the same time have failed to acquire some of its most insular characteristics. The history of the king's clerks as lawyers is worthy of more detailed treatment; but it must await the collection and criticism of a mass of facts which at present can be said to exist only *in posse*. An effort should be made in this direction in the Introduction to some other volume of this series.

## 2. THE TWO BENCHES.

The apprentices who were writing reports in the early years of the fourteenth century passed their time in the Court of Common Bench. They reported few cases heard by Brabazon and his fellow-justices in the King's Bench; and the reason is simple enough. It was in the Common Bench that the ordinary litigation of the country was taking place. The King's Bench never had original jurisdiction in pleas of land, and it had not as yet found in the Bill of Middlesex a means of bringing pleas of debt and detinue within its scope. It busied itself with cases which concerned the king and the king's peace. Qualitatively, the matters at issue were more often points of fact than of law, and the whole body of business transacted there was relatively small. It would be no exaggeration to say that for each term of the reign of Edward II. there were twice as many rolls of the Common Bench as of the King's Bench, and in some terms the proportion was considerably greater in favour of the former court. There was another cogent reason why the apprentices frequented the Common Bench. They were young men presumably seeking fortune; and the expense of following the justices of the King's Bench from town to town would have been considerable. Motives of economy and opportunity for learning alike prompted them to watch and report cases in Westminster Hall.

In the reign of Edward II. the judicial business of the Exchequer of Pleas was insignificant. The rolls of the four terms of 4 Edw. II. are sewn together in a single file, and number no more than fifty-three,<sup>1</sup> whereas there are as many as five hundred and nineteen rolls

<sup>1</sup> Exchequer of Pleas, Plea Rolls, No. 34. It was not until the reign of Mary that there were invariably separate files of rolls for each term. It was,

of the Common Bench for Michaelmas Term alone. And it is not surprising that, so far, our Year Books have contained no reports from the Exchequer, for the records show that the barons were busy with cases relating to the king's revenue, and actions brought by and against his sheriffs, their servants, and other officials. Wide as its jurisdiction was destined to be, the Exchequer of Pleas of the reign of Edward II. can scarcely be described as a superior court of common law. Yet difficult points of common law arose from time to time in this court, and we shall find that the king often appointed men who had practised in the Common Bench to be barons of the exchequer. Already, in the reign of Edward I., John de l'Isle and Roger of Hengham, both of them advocates of distinction, had been created barons. In the reign of Edward II. we shall find Walter of Friskene, Edmund of Passeley, John of Foxley, and Roger Scotre appointed to the same office. Indeed, in this reign we can trace a regular succession of barons of the exchequer who had practised in the Common Bench—Hengham, Foxley, Friskene, Passeley.<sup>1</sup>

Although the King's Bench was still an ambulatory court, it sometimes held sessions at Westminster, and so gave the apprentices opportunities of reporting an occasional decision. In this volume we have but two cases in that court: one is of ravishment of a wife, to which we will return presently;<sup>2</sup> the other of trespass brought by a widow against certain persons who had taken a third part of the deer in a park, of which a third part had been assigned to her in dower.<sup>3</sup> These and other reports in the same court are of some importance in legal history, as they tend to show that the same body of advocates practised in the two benches. Some of their number, such as Laufer and Passeley, seem to have remained at Westminster practising in the Common Bench, for their names constantly recur in the Year Books. Others almost certainly followed the King's Bench. We can find but few instances of Nicholas of Warwick taking part in the proceedings of the Common Bench; yet he was the king's serjeant, in receipt of an annual salary, and presumably a lawyer of distinction. And what we notice of him in the reports is confirmed by the plea rolls; for his name is not to be found in the lists of advocates described on an earlier page. Roger Scotre, whose name seldom appears either in the Year Books or in the plea rolls, suc-

however, usually the case in the reign of Edward VI., and it happened in two years of the reign of Henry VIII. This information is from the official list of Plea Rolls at the Record Office.

<sup>1</sup> E. Foss, *Lives of the Judges*, iii. *passim*.

<sup>2</sup> *Infra*, p. xxxiii.

<sup>3</sup> *Infra*, p. 29.



ceeded Warwick as king's serjeant in September 1309,<sup>1</sup> and on 17 July 1310 he was appointed a baron of the exchequer.<sup>2</sup> We may suspect that Warwick, Scotre, and a few others regularly practised in King's Bench. Others there probably were whose practice was not confined to one court.

It sometimes happened that the justices of the one bench were engaged in hearing cases in the other. Thus, in the report of *Mortimer v. Ludlow*<sup>3</sup> we find Brabazon, the chief justice, and Spigurnel, a justice of the King's Bench, sitting in the same court as Bereford, the chief justice, and Stanton, a justice of the other bench. So, too, in *Kyme v. Leake*,<sup>4</sup> heard in Hilary Term 1 Edw. II., and *de la More v. Twinge*,<sup>5</sup> heard in Trinity Term 2 Edw. II., justices of both benches formed the court. In these two cases the proceedings were enrolled in the Common Bench, and there is nothing in the enrolment which suggests that any of the justices of the King's Bench were present. On the other hand, the record of the case of *Rex v. John Dode*, heard in the King's Bench, concludes with the words :

Et sciendum est quod predictum iudicium redditum fuit in absentia Rogeri le Brabazon, presentibus in banco Willelmo de Bereford, Henrico de Staunton, H. Scrop, L. de Thrikyngham, G. de Roubiry et Henrico Spigurnel, iusticiariis etc.<sup>6</sup>

Such an entry is very uncommon, and we may pause for a moment to consider the case on its merits. The king demanded as his escheat a messuage situate in the City of London, formerly the property of one Master Peter of Pekham, a bastard who had died intestate. The king's attorney claimed that Peter held of the Crown in chief by the service of a penny a year, and so there was an escheat. In reply to this the defendant denied the tenure, and alleged that there was a custom in the City of London that when a bastard died intestate the mayor and alderman should seize his lands and sell them to acquit his debts or dispose of them as they should think fit for the

<sup>1</sup> This is not quite certain. He and Edmund Passeleghe were then sworn to be intendent to the king's affairs of pleas and of other business whereof they should be charged by the king and his council, *Calendar of Close Rolls*, 1307-1313, p. 231.

<sup>2</sup> *Calendar of Patent Rolls*, 1307-1313, p. 265.

<sup>3</sup> Publications of the Selden Society, *Year Book Series*, i. 43-48. The subject of litigation in this case was precisely the

same property as in the case of *Balun v. Mortimer* on p. 187 below. By an unfortunate error the name of the demandant's husband has been printed in the earlier case as Edward instead of Edmund.

<sup>4</sup> *Ibidem*, i. p. 6.

<sup>5</sup> *Ibidem*, i. 183, 185.

<sup>6</sup> *Coram Rege Rolls*, No. 199, r. 90d. Part of the record of this case is printed in the Publications of the Selden Society (*Borough Customs*), xxi. 162.

safety of the dead man's soul. For the king the rolls of Hubert of Burgh and his fellow-justices in eyre at the Tower of London in 5 Hen. III. were cited, where it was recorded that the mayor and citizens came before the justices in that year, and said that all escheats whether by felony or otherwise were the king's, and that no person in the City ought to do homage or fealty except to the king. Precedents were put forward, and the justices, after calling for the assistance of their brethren of the Common Bench, gave judgment for the Crown. This was a great case. The interests of the king and the most powerful of English cities were at stake. It is likely that a long and interesting discussion between the justices and the advocates took place, and to us who desire to know more of what men thought of corporations and their rights in the reign of King Edward II., that discussion would indeed have been helpful. *Rex v. John Dode* is not reported, because the questions argued were of fact and not of law. The king's counsel cited the rolls of the pleas heard by Hubert of Burgh and his fellows at the Tower in 5 Hen. III., as evidence, and not as judicial authority: as evidence, that is to say, of an admission by the mayor and citizens of London, and not as the binding decision of the king's justices.

### 3. THE COMMON BENCH AND THE NISI PRIUS SYSTEM.

In September 1309 it was ordained by the king and his council that there should be six judges in the Court of Common Bench, namely, William of Bereford, chief by the king's command, Lambert of Trikingham, Hervey of Stanton, Henry le Scrope, John of Benstede, and William of Bourne, as it was necessary, so the ordinance said, to have two places owing to the number of pleas being then greater than ever.<sup>1</sup> Of these six judges four had been justices of the Common Bench in the preceding Michaelmas term, but Benstede and Bourne had never before held permanent judicial office. They were formally appointed justices by letters patent dated 6 Oct. 1309. Presumably it was intended that there should be two divisions of the court, consisting of three judges each. In spite of the ordinance, and Bourne's formal appointment, he never acted as a justice of the Common Bench. In the first place, it was the invariable practice for fines to be levied before the full court, and for the names of the justices to be inserted in the feet and indentures of the fines. Those of Bereford, Trikingham, Stanton, Scrope, and Benstede always appear

<sup>1</sup> *Calendar of Close Rolls, 1307-1313*, p. 231.

in the fines levied after the ordinance, to the constant exclusion of Bourne's name. In the second place, each of the justices received a salary paid by a writ of *Liberaté*, which is recorded on the Chancery *Liberaté* Roll. Bereford received sixty marks, as chief justice, and each of the puisne judges mentioned in the ordinance received forty marks with the exception of Bourne, who had no judicial salary. Thirdly, there are numerous entries on the plea rolls of orders made in matters of process by individual judges. Such an entry will end for example with the words '*per Lambertum de Trikingham*,' or '*per H. de S.*'<sup>1</sup> As yet no instance of an order by Bourne has been noticed. Fourthly, the letters patent by which justices were appointed were usually enrolled in the Common Bench as well as in the Chancery. The letters appointing John of Benstede are duly enrolled in the Common Bench, but not those of the same date by which William of Bourne was appointed.<sup>2</sup> This of itself would suggest that he never took his seat in the court in pursuance of his letters patent. We have here sufficient facts to warrant us in assuming that in Michaelmas term 3 Edw. II. the Court of Common Bench consisted of five judges only, and that Bourne was not one of them. It may be that he declined the honour; or it may be that his appointment was revoked. On this matter nothing is known.

And what of the two places of which the ordinance speaks—the two divisions of the court, as we should now say? So far our Year Books show us that for five terms Bereford and Stanton are often sitting together; and that Scrope sometimes sat with them. If Scrope were usually their colleague he was as yet a silent judge, for his remarks are seldom reported. There are many cases in Michaelmas term of 4 Edw. II. in which Stanton was the only judge whom the Year Book represents as taking part in the proceedings. It is likely that in these cases Bereford or Scrope was absent, and that the court then consisted of two judges. We may suspect that they were Stanton and Scrope. Bereford gives us the impression of a man who had much to say; and his absence from the court may be explained by his counsel being needed elsewhere. We cannot say more of the first division of the court than that it usually consisted of three judges, Bereford, Stanton, and Scrope, of whom two formed a quorum.

We can learn still less of the justices of the second division and their work directly from the Year Books. No case is reported in Michaelmas term 4 Edw. II. in which either Trikingham or Benstede

<sup>1</sup> Pp. 174, 198, below.

<sup>2</sup> De Banco Rolls, No. 179, roll of charters, 1.



took part in the proceedings. In three or four cases in 3 Edw. II. Trikingham made a few remarks, but Benstede's name may be sought in vain.<sup>1</sup> We may infer that they formed the second division of the court, the second place mentioned in the ordinance, though without doubt they were from time to time summoned to assist Bereford and his fellows when difficult points of law were being considered by the first division. On these occasions we should expect Trikingham to have more to say than Benstede. He was a judge of greater experience, who had sat in the Common Bench for ten years.

If Trikingham and Benstede had shared with the justices of the first division the work of hearing pleadings before joinder of issue, we should find some mention of their decisions in the Year Books. It is incredible that the reporters found none of their judicial observations worth reporting. The simplest explanation is that Trikingham and Benstede were usually engaged in trying issues which had been joined before the justices of the first division. This conclusion is strengthened almost to certainty by the evidence to be gathered from the plea rolls.

The practice of joining issues in the Benches at Westminster and trying them in the country at *nisi prius* became general in the second half of the fourteenth century; but it was far from general in the early years of the reign of Edward II. Issues were then joined in one term and tried in another, often many terms later, and usually at Westminster. The enrolment of the joinder of issue was abridged thus:

Ideo preceptum est uicecomiti quod uenire faciat hic in octabis Purificacionis beate Marie xii etc. per quos etc. et qui nec etc. ad recognoscendum etc. quia tam etc.

In these entries no judges are named, the place to which the jury was to come is *hic*, that is the Common Bench, and the date when they were to come always fell in term time. When, on the other hand, as happened sometimes, it was desired that an issue should be tried in the country at *nisi prius*, the jury was adjourned in the following term, and the order for adjournment was enrolled thus:

Iurata inter . . . . . ponitur in respectum usque a die Pasche in tres septimanas *nisi* L. de Trikyngham uel H. le Scrop *prius* etc.<sup>2</sup>

Adjournments of this nature are far from common. Although there are numerous cases in this and the three preceding volumes of the series in which issue is joined and process continued, there is none

<sup>1</sup> Publications of the Selden Society, *Year Book Series*, ii. 132, 139, 152.

<sup>2</sup> De Banco Rolls, No. 179, r. 255d.

in which there is an adjournment for the purpose of a trial at *nisi prius*. Still, we ought not to form a confident estimate of the number of these trials solely from the enrolments of adjournments. There are many cases in which the jury is respited and nothing is said of *nisi prius*. It might be suggested that in some of these cases the enrolment is abridged to the exclusion of the *nisi prius* clause. Such an omission of material words is not likely to have occurred frequently, but we shall do well to consider the matter from other points of view.

An issue was never tried in the term in which it was joined; but when the trial had taken place the verdict of the jury, together with the judgment of the court, ought always to have been recorded on the same roll as the joinder of issue. From its first word, the enrolment of the verdict with the judgment of the court thereon was called a *postea*. If these had really been recorded as they ought to have been we should have ample material for determining the number of cases which were tried at *nisi prius*. Unfortunately it was the exception rather than the rule for the *postea* to be enrolled. This irregularity need not surprise us. The verdict was often delivered many terms after issue was joined, and in such cases it would have been a laborious task to find the roll on which to enter the *postea*.<sup>1</sup> Constant searches by attorneys would have been inconvenient to the custodians of the rolls and are likely to have been discouraged by the judges and officers of the courts. Still, enough *posteas* are enrolled for us to see that far fewer issues were tried at *nisi prius* in the country than in the bench at Westminster.<sup>2</sup>

It was only a justice of the bench in which a case was pending who could try the issue in the country, and as we know from the feet of fines that all the justices of the Common Bench were sitting at Westminster throughout the terms, it follows that issues could only be tried at *nisi prius* in the vacations. Such *posteas* as are enrolled always give the name of the justice by whom the issue was tried in the country, and the date of the trial; and they also show that an associate, who was usually a knight, invariably sat with the justice. Evidently the trial of an issue required a court of at least two persons. The following is an example of the *postea* of an issue tried in the country:<sup>3</sup>

Postea a die Pasche in tres septimanas anno regni domini regis septimo, continuato inde processu, uenerunt partes predictae per

<sup>1</sup> If docquets were made of the rolls at this period no trace of them now exists.

series give three examples only of verdicts at *nisi prius*. (*Year Book Series*, i. 61, 101, iii. 163.)

<sup>2</sup> The notes from the records in this

<sup>3</sup> De Banco Rolls, No. 183, r. 319.

attornatos suos. Et Lambertus de Trikingham coram quo predicta inquisicio capta fuit misit uerdictum inquisitionis illius in hec uerba. Postea die Iouis proxima post festum sancti Hilarii anno regni regis Edwardi filii Edwardi septimo apud Graham coram Lamberto de Trikingham associato sibi Iohanne Chaynel uenerunt partes predictae et similiter iuratores de consensu parcium electi qui dicunt . . . .

From a study of the postea scattered among the plea rolls we hope in a subsequent volume to describe the work of the justices at *nisi prius* in the reign of Edward II. At present we can only say that as yet they were not required to go on circuit regularly. Some of them tried issues in a few counties; but others, it would seem, spent their vacations at leisure, for postea of issues tried before them have not yet been found.

Seeing, then, that issues were usually tried in the Common Bench at Westminster, and that the justices of that court were not yet required to go regularly on circuit, we are almost forced to the conclusion that such issues were not tried by the full court. The plea rolls and the Year Books show plainly that a very large body of business was being transacted in each of the four terms during which the court was sitting. These terms were so short<sup>1</sup> that, whatever may have been the earlier practice, it would have been impossible in the reign of Edward II., when legal business was rapidly increasing, for the full court to try issues as well as to listen to long arguments on points of law. Moreover, as a judge and an associate were a sufficient court to try an issue at *nisi prius*, it is incredible that five judges were permitted to discharge a like duty at Westminster Hall. We may therefore infer that in the terms when Trikingham and Benstede took no part in hearing the cases reported in the Year Books, they were normally employed in trying issues at Westminster. It is not, however, certain that the assignment of two or more justices to try issues was first introduced by the ordinance of 1309. The king may have intended that there should be two divisions of the Common Bench, each discharging the same duties; and may have afterwards abandoned the scheme.

There is one other fact which, independently of all that has already been stated, suggests that in 4 Edw. II. Trikingham was not sitting in the bench with Bereford and Staunton. It is an old-established rule, which still subsists, that on a trial at bar the sentence of the court is pronounced, not by the chief justice, but

<sup>1</sup> The longest term was Michaelmas, which lasted from 6 Oct. till 29 Nov.



by the senior puisne justice.<sup>1</sup> It is also clear from the reports that at the beginning of the fourteenth century a formal judgment was always pronounced in civil cases by one of the justices on behalf of the whole court. We may suspect that the rule in criminal cases that the judgment is pronounced by the senior puisne justice once applied to civil as well as to criminal cases. But there is abundant evidence in this volume that the formal judgment of the court was always delivered by Staunton. If therefore Trikingham had been sitting with Bereford and Staunton, and the rule applied, the task of delivering judgment would have fallen to him, and not to Staunton, in right of his seniority.

#### 4. THE CASES IN THIS VOLUME.

This volume contains one hundred and twelve cases and a few notes,<sup>2</sup> which together fill no more than a single page. About one-fifth of the cases are from various terms of 3 Edward II., and the remainder from Michaelmas term of the following year. The incompleteness of the old edition, which was based upon a single manuscript, appears strikingly from the fact that of our one hundred and twelve cases all save twenty-three are now printed for the first time. Our volume, besides containing a mass of new material for legal history, supplies several variant texts of the cases in the old edition, of which all but two are now illustrated and explained by notes from the record. There still remain a few cases of Michaelmas term, 4 Edward II., to be printed in the fifth volume of this series, which will probably contain a few cases of various terms of the same and preceding years. It is sometimes difficult to ascertain to what term a case which is reported in one or a few manuscripts only should be assigned, and the search for the corresponding record is then long and troublesome. Again, it may happen that a case is reported in one term and recorded in another. Thus the record of *Wolfe v. Martone*<sup>3</sup> appears in the plea rolls of Michaelmas term, 3 Edward II., and the report of it among the cases of Michaelmas term, 4 Edward II. This case was first argued in Michaelmas term, 3 Edward II., and a day then given to the parties to hear judgment in Easter term, but on the defendants

<sup>1</sup> Thus, on the conviction of Colonel Arthur Lynch, M.P., on 24 Jan. 1903, sentence was passed by Mr. Justice Wills, the senior puisne justice.

<sup>2</sup> P. 26, below. Many of the re-

ported cases, however, are little more than notes. See, for example, pp. 136, 170, 173.

<sup>3</sup> P. 146, below.

then failing to appear, the sheriff was ordered to have their bodies in court on a day in the following Michaelmas term. The adjournments and judgment were entered on the rolls of the term in which the case was originally heard, but in the manuscript the report is included among others of the term in which judgment was given. The records of such cases as these are often difficult to discover, and the reader must be prepared to find that some of them are printed out of their proper order. The reservation of a few cases in each year for a section having the title, 'pleas of various terms,' is a practical expedient, which has as its object the more speedy publication of the volumes. It gives the editor more time for the consideration of difficult cases.

Some of the earlier volumes of this series may contain more in illustration of the social life of the early fourteenth century than is to be found in the following pages, though there are matters here which are of no little interest from that point of view. We have, for example, our first reported case of proceedings for the recovery of a wife pursuant to the provisions of the Statute of Westminster II. The mere fact of such an enactment suggests that a lawless spirit had arisen after the barons' war which struck at the very heart of domestic life. And this case<sup>1</sup> of *Gyse v. Baudewyn* is not a very exceptional one, for there are not a few others of the same sort on the rolls of the King's Bench about this time.<sup>2</sup> Then Bereford's outburst against the bishop of Hereford, when avowing for suit of court, seems to echo popular feeling on the Statute of Mortmain. 'The men of Holy Church,' he declared,<sup>3</sup> 'have a wonderful way! If they get a foot on to a man's land they will have their whole body there. For the love of God, the bishop is a shrewd fellow!' He spoke bluntly, too, when he said to the bishop's counsel, 'It is a dishonourable thing for an honest man to demand that which his predecessor released.'

There are many indications in these volumes that suit of court was one of the great grievances of the small landowner. The right to enforce it had been restricted by the ninth chapter of the Provisions of Marlborough to cases where it had been expressly reserved by charter of feoffment, or had been done by the tenant or his ancestors

<sup>1</sup> P. 4, below.

<sup>2</sup> The record of *Cicestre v. Maunby* is printed on p. 206, below. Another case of the same nature will be found on the rolls of Mich. term (3 Ed. II., Cor. Rege Rolls, No. 198, r. 15). Several commissions of oyer and terminer for

such cases were granted in the early years of Ed. II. (*Cal. Pat. Rolls*, 1307-1313, pp. 86, 144, 181, 426, 476, 549); but the records of the proceedings under them have not been preserved.

<sup>3</sup> P. 69, below.

before the voyage of Henry III. into Brittany in 1230. It was an enactment which gave rise to a plentiful crop of litigation. Perhaps it was with reference to this provision that Bereford exclaimed,<sup>1</sup> 'For twenty years past there has not come into England so good a law for poor people.' If so he meant that since the Statute of Quia Emptores, enacted just twenty years earlier (which incidentally prohibited entirely the reservation of suit of court on a grant in fee simple), there had been no such good law for the poor as the ninth chapter of the Provisions of Marlborough by which the practice of enforcing suit was restricted. It was in this same case that Bereford declared<sup>2</sup> that by a decision on the avowry before the court they would make a law throughout all the land. 'A bad rascal of a bailiff or hayward by duress might cause a poor man to do suit, and thereby he would remain charged for all time through this false possession.'

Although the lawyers of the Middle Ages were often satirised by their contemporaries as grasping and covetous, the Year Books show plainly that some of the judges were far from being indifferent to the interest of the poor. We have just noticed some remarks by Bereford which illustrate this, and many others of a like nature may be cited. In *Scaldeford v. Vaudey* he said<sup>3</sup>: 'It may happen in this case as it happened here in Brompton's time in the case of a poor woman who brought a writ and counted through a woman who had committed felony. And on this point she was challenged, and the whole court had pity on the poor woman; and yet she could not be helped.'

We may now consider some of the cases printed in this volume. Space can be spared for a few brief notes only, which have as their object illustration rather than explanation. The proceedings<sup>4</sup> in *Wikham v. Abbot of Cirencester*, our first case, were commenced by a little writ of right in the court of ancient demesne of Shrivenham, in Berkshire. The tenant went to the Chancery and procured the removal of the cause into the Common Bench by a writ of *recordari*, on the ground that the lands demanded were held by him under a charter of Henry I., which could not be tried in any but the King's Court. We have two reports of the case, but even with the aid of the record, which has fortunately been found, it is not easy to ascertain

<sup>1</sup> P. 162, below.

<sup>2</sup> P. 161, below.

<sup>3</sup> P. 33, below. The grant of lands in 1291 by Ellis of Bekingham, one of the king's justices, to the abbot and monks of Peterborough, on condition

that on the anniversary of the death of Eleanor, the queen of Ed. I., they should feed two hundred poor persons, should be noticed. (*Calendar of Patent Rolls*, 1281-1292, p. 414.)

<sup>4</sup> P. 1, below,



exactly what happened. Apparently the demandant counted of his right (though the record says nothing of this), and the tenant, after objecting that he held the lands in free alms of the gift of Henry I., whose charter he produced, prayed judgment whether he ought to answer the writ, which was not according to the Common Law. By this he meant that the little writ of right (which was always addressed to the bailiffs of a manor on the ancient demesne) commanded them to do full right according to the custom of the manor, which would not be known in the Common Bench. If the demandant had admitted that the lands were held of the king in chief, his action would have been dismissed, and he would have been obliged to commence another by a writ of Precipe in Capite which was returnable in the King's Court. Instead of denying the charter the demandant averred that the lands were not comprised in it, but formed, as his writ had supposed, part of the ancient demesne. The Court held, after some discussion, that the tenant must receive this averment. Issue was joined and a jury summoned, but the verdict is unfortunately not recorded.

Though earlier examples might be cited, the removal of a cause from a court of ancient demesne by a writ of *recordari* was exceptional. This is, perhaps, the explanation of the brevity of the record on which the demandant's count is not mentioned. The clerk, that is to say, who recorded the proceedings, probably had had little experience of such a case.<sup>1</sup> It was by constant assertion and occasional extensions of its rights in matters such as these that the Common Bench gradually drew all the important legal business of the country from the local courts.

Another interesting feature of the case is that the writ of *recordari* ordered the sheriff to record the cause in the hundred of Shrivenham, instead of in the court of the manor of that place. South of the Thames many hundreds were appurtenant to manors and passed with them on alienation. Hence it is that in Devonshire nearly all the hundred courts had passed out of the king's hands before the beginning of the thirteenth century. In such cases the grantee ought to have held two courts, one for his manor, and the other for his hundred. It is evident from the case of *Wikham v. Cirencester* that the lords of Shrivenham held both their courts together, and made no distinction between them.

<sup>1</sup> There are, so far, no cases in this volume of actions removed into the Common Bench from a court of ancient demesne; but there are two cases in which a plea of ancient demesne was

raised; both of them were commenced by writs returnable in the Common Bench. See vol. i. p. 93, and vol. ii, p. 59.

Passing by the case of *Arundel v. Chauvent*, we come to *Gyse v. Baudewyn*,<sup>1</sup> which is interesting as the first reported case of proceedings upon a writ of ravishment<sup>2</sup> of a wife. Singularly enough the thirty-fourth chapter of the Statute of Westminster II. upon which the writ is founded, is written in French, whereas all the remaining chapters are written in Latin. Notwithstanding this unexplained fact, which may yet be shown to have some bearing on the history of the Parliament in which the statute was enacted, there can be no doubt that the chapter forms part of our Statute Law. The report of the case is unfortunately obscure, probably owing to the omission of a speech, but it is clear that one of the defendants, Thomas Baudewyn, wished to plead that Isabel was not the wife of John de Gyse, the plaintiff, but his own. The Court, however, refused to allow him to plead this, permitting him only to deny that he ravished the lady, whom the plaintiff claimed as his wife with her goods and chattels. It was on this point that the case was reported. Four of the plaintiffs made the same defence as Thomas Baudewyn, and the other four said that they were in no way guilty of the ravishment and trespass. In the following Trinity term the jurors found in favour of all the defendants, and the plaintiff was amerced for his false claim. In view of the discussion reported in the *YEAR BOOK* it might have been thought that the verdict settled that Isabel was not John de Gyse's wife, but Thomas Baudewyn's; but apparently such a question could not be settled by a civil court. Six years later, in December 1315, the king granted a commission of oyer and terminer on the complaint of Thomas Baudewyn that John de Gyse had abducted Isabel, his wife, at Stamford, and carried her away with his goods and chattels.<sup>3</sup> The result of these proceedings is not known; but in September 1316 two persons, who had been adjudged to prison for a disseisin upon John de Gyse and Isabel, his wife, were pardoned by the king, which shows that Isabel was then or had recently been recognised as John's wife.<sup>4</sup> In the Appendix to this volume, the record

<sup>1</sup> P. 4, see below.

<sup>2</sup> The word ravish is here used as a translation of the French 'ravisser,' in the sense of to abduct forcibly. It was also used regularly in proceedings for the abduction of a ward of either sex.

<sup>3</sup> *Calendar of Patent Rolls*, 1313-1317, p. 424. John de Gyse had himself obtained a commission of oyer and terminer against Thomas Baudewyne and eight others for the ravishment of his wife Isabel in Wakerley. Presumably

the commission decided that no ravishment took place at Wakerley. In the reported case the ravishment was alleged to have taken place at Aspley. John de Gyse also brought a writ of abetment against Thomas Baudewyn in Hilary term, 3 Edward II., for appealing him of the death of Brice of Burwode, *Year Books*, vol. ii. p. 155.

<sup>4</sup> *Calendar of Patent Rolls*, 1313-1317, p. 545.

of another case<sup>1</sup> of ravishment of a wife, *Cicestre v. Mauneby*, is printed, which further illustrates the procedure and pleadings in cases of this nature.

The report of *Thackstede v. Freebarn*<sup>2</sup> has wandered from its proper place. The record appears among the pleas of the Common Bench of Michaelmas term, 2 Edward II., and was copied by a reporter who placed his copy among the reports of that term. Probably the reason for its appearance there is that the reporter found some difficulty in learning the pedigree of the parties, without which he could not report the case to his satisfaction, and was therefore obliged to apply to the keeper of the rolls for assistance. Other Latin records appear from time to time in the Year Books of the reign, and indeed the first case in this series is the record<sup>3</sup> of *Maulay v. Driby*, in which the pedigree is far from simple. The name of the case, *Thackstede v. Freebarn*, bears no verbal resemblance to *Spalding v. Tramplees*, by which the case was known to the reporter. Spalding seems to have been selected at random to take the place of the uncommon name of Thackstede, but Tramplees was probably a scribal blunder for Cranesley, the name of a person whom the tenant in the action vouched to warranty. Mistakes in spelling of this kind are not confined to unofficial reports, for they sometimes occur in official records. Thus this very case of *Thackstede v. Freebarn* gave rise to a fine in the foot<sup>4</sup> of which Johannes de Cranesle is erroneously called Johannes de Grauesle.

There can be no doubt of the identity of the two cases. Both are assizes of mortdancestors, based on the seisin of an uncle of the demandant's wife Emma, and in both the defence is an exception of last seisin—that is to say, another person of the same blood has been seised since the ancestor died. In both the replication is that the person last seised is an *ablator*, or tollor,<sup>5</sup> who has unlawfully snatched the vacant inheritance.

The report helps us to elucidate a story which is not very clear from the record. It is evident from the latter that Emma claimed to be the daughter of the second of three brothers, Thomas, William and Ralph, and as such the heiress of Thomas, upon whose seisin the assize was brought. The report shows that, according to the tenants by the warranty, Emma's father, William, was the eldest of the three

<sup>1</sup> The record of this case was printed by way of illustration, and in substitution for that of *Gyse v. Baudewyn*, before the latter had been found.

<sup>2</sup> P. 24, below.

<sup>3</sup> Vol. i. p. 1.

<sup>4</sup> The reference to this fine will be found on p. 24 (note 3) below.

<sup>5</sup> For the meaning of 'tollor' see vol. i. p. 49.



brothers and a son by a first wife, whereas Thomas and Ralph were sons by a second wife. They therefore demanded judgment whether Emma, whose father was of the half-blood, could bring the assize or affirm that Ralph entered as a tollor.

There is, however, some difference between the report and the record about what happened finally in court. According to the latter the demandant denied that William was of the half-blood, and prayed judgment on the ground that Ralph was a tollor. A day was then given to the parties, and after three further adjournments the action was settled by a fine. The report shows, and no doubt correctly, that the parties could not agree upon the question to be put to the jurors of the assize, and that the plaintiffs maintained that the objection that Ralph was not of the whole blood amounted to no more than that Emma was not the ancestor's heiress. The further assertion, however, that issue was then joined as to whether she was or was not the heiress, is in the face of the testimony of the record undoubtedly untrue.

A case of trespass brought in the King's Bench in Michaelmas term, 4 Edward II., is of some legal interest.<sup>1</sup> A lady to whom the third part of the park of Glynde, in Sussex, had been assigned in dower, brought an action against divers persons for taking deer from the park, and claimed damages for every third deer which had been taken, and the writ was adjudged good. There is nothing in the record which suggests that the owner or possessor of the park was one of the defendants in the action, but the report makes this quite clear. Probably he was the first defendant named in the record. No trace of the attempt to abate the writ, on the ground that damages could not be recovered for a chattel held in common and not severed, appears upon the record, which only contains the formal plea of not guilty and the joinder of issue.

The case of *Maners v. Randolph*<sup>2</sup> in this term is some authority for the proposition that the Statute *De Donis Conditionalibus* extended as well to gifts made before its enactment as to those made afterwards, provided that the tenement in demand had not been alienated before the statute; and this notwithstanding that the statute declares that it was not to extend to gifts made theretofore. There was, however, no direct judicial decision on the point. The tenants had prayed judgment on the ground that the demandant had counted of the seisin of his ancestor before the statute at a time when no writ in the descender had been ordained. After some discussion Scrope, who

<sup>1</sup> *Esthale v. Penbridge*, p. 34, below.

<sup>2</sup> P. 40, below.

appeared for the demandant, asked leave to imparl, and on his return into court, adhered to his count, and asserted that in this case 'the tail of the tenements remained as if they had been granted in frank marriage after the statute.' On his praying judgment, Toudeby for the tenants waived his plea and vouched to warranty. As we might expect, the enrolment says nothing of Toudeby's abortive plea, but recites in due form his voucher.

There was some discussion about the early nature of an estate tail in this case. Toudeby in the course of his argument asserted that there was no 'tailed form' before the statute, to which Bereford, C.J., replied,<sup>1</sup> 'Yes [there was] a hundred years before the statute.' Then Toudeby said, 'But in case of such a form there was no recovery given save in the remainder or reverter,' a qualification which Bereford accepted by saying 'That is a different matter.' Presumably they were referring to a special writ of entry for a tenant in remainder or reverter, expectant upon the determination of an estate tail which appears in at least one manuscript of the *Registrum Brevium*. Too much importance, however, should not be attached to Bereford's precise words when he said that this form of writ existed a hundred years before the statute; for in the very same case he said that a like voucher to the tenants had been seen 'these hundred years,' by which he probably meant a considerable period of time. In another case (*Sampson v. Grene*) he stated that at Common Law the issue in fee tail had no other recovery than by writ of mortdancestor.<sup>2</sup> This remedy was undoubtedly used before the Statute *De Donis* by heirs in tail, and a well-known case of it has been cited from the Yorkshire eyre rolls of 7 Edward I.<sup>3</sup>

In *Penwore v. Reynward*<sup>4</sup> an intricate plea, after a discussion which is reported at some length, was abandoned by the plaintiffs in replevin, who thereupon had recourse to the plea of *hors de son fee*, which constantly occurs upon the records. Their persistence with the first plea seems to have enraged Bereford, who exclaimed,<sup>5</sup> 'By St. Peter, you shall confess or deny before you depart.' It is scarcely necessary to add that the first plea, much discussed though it was, finds no mention on the record. *Penwore v. Reynward* is also interesting as giving a good example of a reporter making use of a proper name of his own selection, in place of one which he could not understand. In the first report of the case a lady is called Oppe, in the second Opporcona,

<sup>1</sup> P. 41, below.

<sup>2</sup> Pp. 112, 113, below.

<sup>3</sup> Pollock and Maitland, *History of*

*English Law*, vol. ii. pp. 28, 29.

<sup>4</sup> P. 73, below.

<sup>5</sup> P. 75, below.

which is no doubt a blunder for the Latin *Opportuna*, but in the third we find her called by the entirely different name of *Elizote*.<sup>1</sup>

A word which Professor Maitland hoped to explain in this introduction was the French 'eschorcher,' which occurs in a report of *Rungefer v. Latimer*.<sup>2</sup> One John Rungefer held tenements in Wyboston and Eaton of Alice la Latimer, by homage, fealty, escuage, and rent; Alice herself holding the tenements in Wyboston of Geoffrey la Soke; and those in Eaton of another lord. When Geoffrey distrained John for homage and rent the latter brought a writ of mesne against Alice, demanding acquittance in Wyboston. Alice said in her defence that she ought not to answer John to this writ to such a count, &c., for the writ exacted acquittance of services, &c., for his free tenement in Wyboston, and by his count he strove to bind her to acquit him of service, &c., for his free tenement in Eaton, and prayed judgment for the variance, &c. In the course of the argument, as reported in one of the MSS., the following dialogue took place:—

*Bereford, C.J.* You demand to be acquitted of the tenements which you hold in Wyboston and your account says in Wyboston and Eaton?

*Laufer.* Our count only says in Wyboston, although we show how we hold in divers villis by one single service in divers seignories.

*Bereford, C.J.* (in a rage, addressing *Laufer*.) At what moment of time does your count begin, you wicked caitiff? (*Laufer* said no word.) I take it that you ought first to 'skin' your writ and then to count your count. But first in 'skinning' your writ you demand acquittance of the tenement that you hold in Wyboston, and afterwards you count that you hold of her tenements in both villis, and of that variance they demand judgment.

If 'to skin' be the literal translation of the word 'eschorcher' the context seems to require the meaning 'to summarise,' for which some authority can be found in mediæval French.<sup>3</sup> In all counts the demandant or plaintiff, as the case might be, invariably began with a brief statement of the cause of action as stated in the writ, and then proceeded to give particulars of his claim, which always

<sup>1</sup> The lady was mentioned in an abortive plea, and consequently her name is not found in the record.

<sup>2</sup> P. 135, below.

<sup>3</sup> ESCORCIER, *escorcer*,—*Raccour-*

*cir*, en parlant du temps. Li juges ne poet escorcier lou terme ou aloignier le. *Ordin. Tancrei*, MS. de Salis f° 23<sup>v</sup>. Godefroy, *Dict. de l'ancienne langue française*, iii. 424.



began in the enrolment with the words 'et unde.' From the note to the record it will be seen that John Rungefer in the first part of his count demanded that Alice should acquit him for his free tenement in Wyboston, 'and thereupon'<sup>1</sup> said that whereas he held of her a messuage and a virgate of land in Wyboston and a messuage in Eaton by homage service, escuage, and rent, for which service Alice ought to acquit him against all men, &c. Bereford's indignation was evidently aroused by Laufer's claiming that his count began with the summary of the writ in which Wyboston alone was mentioned, whereas he himself held that the count properly began with the particular statement beginning with the words 'and thereupon,' in which acquittance was claimed for tenements in both Wyboston and Eaton. There are many easier tasks than to report, without the aid of modern shorthand, a rapid dialogue in a court of law, and it may be that Bereford's words of anger are more correctly reported than his words of law. If the 'count' was generally used in legal proceedings of the summary as well as of the particulars we can yet understand Bereford's point: the particulars and not the summary were the essence of the count.

A considerable number of reported cases are really little more than notes, and it would be almost impossible to identify the corresponding record; but here and there a note in one manuscript appears to relate to a case which is fully reported in another. In this volume we have, for instance, a note saying that a view was refused in proceedings on a writ of suit of mill. It is not improbable that this note relates to the case of *Burnhill v. Ringetherose*, which occurs in our third volume among the cases of Trinity term, 3 Edward II. It is also not unlikely that the brief note headed 'No action of waste against a bailiff' is really based on the case of *Pateshull v. Bray*, which also occurs in our third volume.

Apart, however, from these brief notes there will probably be in every year a few reports, of which the records cannot be identified with certainty. We may take as an example the one in Michaelmas term, 4 Edward II., for which *Laurence v. Germeyn* has been suggested as the record.<sup>2</sup> In the first version the demandant is called John of Dunstable, but, as in many other cases, this may be a name supplied by the reporter. The action was apparently some form of entry; and the demandant counted of the seisin of one Robert, with descent to Robert's son William, and from William to his brother John, the

<sup>1</sup> The words 'et unde,' though translated 'and thereupon,' bore the meaning

'and with respect thereto.'  
<sup>2</sup> P. 147, below.

demandant. This case if correctly reported cannot be *Laurence v. Germeyn*, which was a *cui in uita* with a descent traced to the demandant from his grandmother. In the second version the action was brought on a writ of *cui in uita* by a demandant, who counted his descent from his grandmother (whose relationship to him is expressly mentioned), and from her to her son, and from that son because he died without an heir of his body to another son. The last step in the descent—namely, from the second son of the ancestor to the demandant as her son and heir—is omitted.

Very little alteration is needed in the first version to make it agree with the second. The demandant's ancestor must be not a man, but a woman and a grandmother, and the descent instead of reading 'from W. to J., the demandant, as brother,' must be made to read 'from W. to J. as brother, and from J. to J., the demandant, as son. We can scarcely doubt that the first version is badly reported, and really represents the same case as the second, more especially when we find that the discussion is substantially the same in both reports.

If we were to judge solely by the form of the action and the demandant's descent, we should be very much inclined to identify the reported case with *Laurence v. Germeyn*, for though the *cui in uita* was one of the commonest of actions, a descent from a grandmother is decidedly uncommon. But the reported case also resembles the record in the issue being one of bastardy, and were it not that there is one very material point of difference between them we should have very little doubt about the identification. The difference is that in the reports the tenant objects that William, the son of the ancestor, left a son who was living at the date of the hearing, and that during his lifetime there could be no descent from William to William's brother. To this the demandant replied that William's son was a bastard. In *Laurence v. Germeyn*, on the other hand, it was the tenants who objected that the ancestor's son was a bastard. Such a difference as this, however, is not fatal to the identification, for the reporters often made mistakes. The noteworthy feature of the reported case is that the objecting party wished to plead 'born before wedlock,' whereas the Court insisted on his pleading 'bastard.' We may imagine that the reporter began his note thus: 'Entry *cui in uita*, descent from grandmother, objection of bastardy. Ingham maintains . . .' In this way the mistake of attributing the objection to the wrong party might have arisen; but it cannot be denied that the difference between the facts as stated in the report and the record leaves us in some doubt about the identification.

Towards the close of the volume a brief note<sup>1</sup> draws attention to a fine by which three advowsons passed 'without glebe.' It appears from the record<sup>2</sup> of the admission of the fine by the justices of the Common Bench that the abbot and convent of Robertsbridge had suffered great losses through the inundation of the sea upon the marshes of Winchelsey, Rye, and Broomhill, and that the king had given them licence to acquire the advowsons of three churches, notwithstanding the Statute of Mortmain. The original writ upon which the fine transferring the property was levied comprised an acre of land as well as the three advowsons. This was no doubt in deference to a rule, well recognised in the thirteenth century, that when a man purchased the advowson of a church his purchase was worth nothing if he were not enfeoffed of a lay fee in the same town as the advowson. In this case, however, the acre of land was in one only of the three towns of which the advowsons were intended to be transferred, so that its insertion was not in strict compliance with the rule. The justices perhaps considered the rule to be either obsolete or unreasonable, for in the foot of the fine the acre of land was omitted. It will be observed that the reporter here uses the word 'glebe' in none of its modern senses, but as land to which an advowson is appurtenant.

Another note in this volume<sup>3</sup> about the fine by which James of Audeley granted the manor of Fairlight to Edmund Passeley (the serjeant) is somewhat obscure. Perhaps the reporter meant to explain that James granted the manor by fine to Edmund without expressly granting him the homage and services of a tenant, one J. de A., and that in order to obtain the full benefit of the fine he afterwards granted the homage and services in court, because without such a grant J. de A. could not be compelled to attorn to his new lord by a writ of *per quae seruicia*. This explanation receives some confirmation from the license to agree and the foot of the fine, in neither of which is J. de A. mentioned.<sup>4</sup>

Lastly, we may notice the case<sup>5</sup> of *Broke v. Taylard*, in which Stanton, J., ordered an attorney to be imprisoned for misconduct. It appears that the tenant in an action for dower came into court by his attorney, and vouched one John Loveday, and at the day given John failed to appear. The report shows that Stanton first asked the attorney if he had sued a writ, and on his answering 'Yes,' asked

<sup>1</sup> P. 170, below.

<sup>2</sup> P. 217, below.

<sup>3</sup> P. 173, below.

<sup>4</sup> It is likely that the court held that

homage and services could not be the subject of a fine by grant and render.

<sup>5</sup> P. 194, below.



him for his bill witnessing this. Apparently by bill Stanton meant a writing which stated that the tenant had appointed the attorney to act for him in the plea of warranty. The attorney excused himself by saying that he had sued no bill, but had delivered 'it,' meaning the writ, to his master, thus suggesting that it had been arranged between them that his master, the tenant, should conduct his own case. Stanton then asked the attorney what he wanted, and the attorney replied '*a postea*.' It is difficult to see what else he could have meant than a summons *sicut pluries*, but no evidence of the use of the word *postea* to describe such a summons has come to light, and it may be that the word is an error for *pluries*. Stanton, however, refused to believe that the attorney had sued the writ of summons, and ordered him to be imprisoned, on the ground that he had vouched John Loveday solely in order to delay the demandant in recovering her dower. The record says nothing about the imprisonment of the attorney, but concludes with the words, 'And the attorney of Thomas is told that he sues at his peril, etc.' Possibly Stanton spoke hastily, and withdrew his order. We know that he was nicknamed Hervey the hasty.

#### 4. THE CRIB.

Here perhaps it may be convenient to consider a suggestion made by Professor Maitland in the Introduction to the second volume of this series, where he cited a passage from a manuscript of the 'Year Books.'<sup>1</sup> 'Et postea dictum fuit en le Cribbe coment il fut resceu a exceptioner.' 'What the Crib was,' he commented, 'we fain would know. . . . We have thought of a common dining-room, and we have thought of a part of the court set apart for students, but in the end we are asking rather than giving information. . . . Some member of the Society . . . may have happed upon "the Crib" and will earn our thanks if he will tell us of its nature; for these discussions among young lawyers are of considerable interest to those who would trace the genesis of our law reports.' Since Professor Maitland wrote these words a member of the Society has 'happed' upon a document which goes some way towards explaining the word 'cribbe.' It is a petition addressed to the King by the apprentices of the Common Bench. Somewhat worn and in places now scarcely legible, it seems to read as follows :—<sup>2</sup>

<sup>1</sup> Year Book Series, vol. ii. p. xvi.

<sup>2</sup> Ancient Petitions, file 189, No. 9409.

A nostre seignur le Roi Prient ses emprentis de sun comun banke pur die[ux] et pur les almes de ses progenitours qil voille cumander a sun treasurer e a Sire William de Bereforde qe il voillent suffrir qe eux puissent faire une Crubbe pur lour esteer a lour aprise dune part de la dite place autre[ci] com il ad de lautre part.

The petition is endorsed thus:—

*Ostendatur* [thesaurario] et *Willelmo* de Bereforde.

The King, we learn, was asked to order his Treasurer and his Chief Justice of the Common Bench to allow his apprentices of the Common Bench to make a 'Crubbe' on one side of the court where they might stand for their instruction just as (in the Crib) on the other side. If this be the meaning of the petition then Professor Maitland's suggestion that the Crib was a part of the court set apart for students is justified. Our document, however, has an interest beyond the 'Crib,' for it touches the history of the English Bar. It shows us that in the reign of Ed. II. there was a body of men, who could be described as the King's apprentices of the Common Bench. It would seem that these *apprenticii*, afterwards to become known as barristers, were originally attached to the same court as that in which the serjeants had an exclusive right of audience, and that they were at this period learners rather than practisers of the law.

It remains for me to state to whom the responsibility of editing this volume should be attributed. When the unhappy news of Professor Maitland's death reached England, the proof sheets of the whole of the French text, translation, and his notes from the record had been corrected and paged. I have collated the proof in pages (which he had not revised) with his corrected proof in galleys, and here and there have made a few further but trifling corrections of a typographical character in the text and translation. The notes from the record, however, were based upon Latin transcripts made by myself. In many cases they had not been collated by him with the original documents, and I feel sure that he would have asked me to collate and revise them further. I have accordingly done this, making more alterations in these notes from the record (for which I was largely responsible) than in the text and translation. The alterations, however, were for the most part in the spelling of proper names, the addition of words and clauses occasionally omitted, and the correction of references, alterations which might have been due

to my own defective transcripts. I have also occasionally changed a *de* into an 'of,' and one or two suchlike small words for others for the sake of uniformity; and I have added to the footnotes the modern names of places which had been left unidentified in the proof. As Professor Maitland was particularly anxious that the records corresponding to the first three and some other cases in the volume should be found, I made them the subject of a special search. I have been able to add to the book twenty-eight Notes from the Record. Sixteen of these are printed in the Appendix, and the twelve which are mentioned in the footnote below<sup>1</sup> are inserted in their proper place among the reports, the pagination of the volume from page 183 having been renewed. I have distinguished every other substantial addition by an asterisk. It is hoped that these additions, which have unfortunately caused some delay in the publication of the volume, may materially add to its value.

I have to thank my friends Dr. Gross and the Hon. Secretary for advice on various matters, and Mr. Cyril Flower, of the Public Record Office, for reading this Introduction and making many useful corrections and suggestions.

G. J. TURNER.

<sup>1</sup> Nos. 67, 69, 74, 75, 76, 78, 80, 81, 84, 87, 88, 90.



# LEGAL CALENDAR

## FOR THE

### FOURTH YEAR OF KING EDWARD II.

---

The fourth year of the reign began on July 8, 1310. The Sunday letter was D for 1310 and C for 1311. In 1311 Easter fell on April 11.

#### JUSTICES OF THE KING'S BENCH.

Roger le Brabazon, C.J. ; Gilbert of Roubery ; Henry Spigurnel.

#### JUSTICES OF THE COMMON BENCH.

William of Bereford, C.J. ; Lambert of Trikingham ; Hervey of Stanton ; John of Benstede ; Henry le Scrope.

#### NAMES OF COUNSEL WHO ARE MENTIONED IN THIS VOLUME.

Cantebrigg', Johannes de	Kingeshemede, Simon de
Clauer, Johannes	Laufare, Nicholaus de
Denum, Johannes de	Malberthorpe, Robertus de
Denum, Willelmus de	Miggele, Willelmus de
Friskenev, Walterus de	Passeley, Edmundus
Hampton, Ricardus de	Roston, Willelmus le
Hedon, Robertus de	Scrope, Galfridus le
Herle, Willelmus de	Tilton, Johannes de
Hertipole, Galfridus de	Toutheby, Gilebertus de
Huntingdon, Radulphus de	Westcotes, Johannes
Ingham, Johannes de	Wilughby, Ricardus de

Of these the following are mentioned in the Year-books but not in the plea rolls of Michaelmas term, 4 Ed. II. :—

Galfridus de Hertipole	Johannes de Tilton <sup>1</sup>
Willelmus de Roston	

And in this term the following are mentioned on the plea rolls only :—

Asshele, Robertus de, 199 <i>d</i> , 262,	Loveday, Johannes, 16, 45
382	Russel, Robertus, 70 <i>d</i> , 73 <i>d</i> , 100,
Crampt', <sup>2</sup> Johannes de, 65 <i>d</i>	398 <i>d</i>
Goldington, Willelmus de, 15 <i>d</i>	Saumson, R., 159 <i>d</i>

<sup>1</sup> Johannes de Tilton appears on the plea rolls of Mich. 34 Ed. I. as a 'narrator' (De Banco Rolls, No. 161, r. 31).

<sup>2</sup> Crampt' is perhaps an error for Cantebrigg', which is sometimes written as Grantebriyg'.

THE YEAR BOOKS OF EDWARD II.

VOL. IV.

THIRD AND FOURTH YEARS.

PLACITA DE DIVERSIS TERMINIS ANNO REGIS  
EDWARDI FILII REGIS EDWARDI TERCIO.1A. WIKHAM *v.* CIRENCESTER (ABBOT OF).<sup>1</sup>

De recto in curia Adomari de Valencia record[ato] coram Justiciariis de Banco.

Johane de Wychem de antiquo dominico porta le petit bref de dreit clos secundum consuetudinem manerii en la court Aymer de Valenz de Skyverham vers l'Abbé de Cyrencestre et demanda certeynz tenemenz de la seisine son ael. Ou l'Abbé vient et dit qe le Rey H. dona mesme les tenemenz a la eglise de Cyrnecestre, et ibi ostendit<sup>2</sup> cartam Regis, que testatur quod idem Rex etc. ecclesie de Cyrnecestre capellam de B. cum tota terra ad eandem spectante dount la terre est parcel : par qai il ne puit ces tenemenz mener en jugement saunz le Roy. Issi qe il avoit jour outre. Puis il vient a la Chauncelerie et fit sa suggestioun coment il fut enpledé en la court avaunt dite des tenemenz dount il avoynt<sup>3</sup> la chartre le Roy, la quel ne pout estre jugé<sup>4</sup> leynz etc., par qai il ne puit ceux tenemenz mener en jugement leynz etc.<sup>5</sup> Par qai il avoit bref de remuer la parole devant Justiz du Bank.

*West.* Les tenemenz sont del aunciene demeigne le Roy : prest etc. par Domesday. Par qai n'entendoms qe par noil suggestioun par quele la parole est ore ceynz venuz devoms cy r[espondre].

*Herle.* Le Roy<sup>6</sup> Henri dona la chapel etc. ov tot la terre de ceo appendaunt a la eglise de Cyrnecestre par sa chartre. Issi vous dioms qe les tenemenz en demande sunt continuz en la chartre, et desicom la chartre tesmoigne la terre estre apendant a la chapel

<sup>1</sup> Text from *S* (Hil.) : compared with *T* (Hil.). <sup>2</sup> ostendet *T*. <sup>3</sup> avoit *T*.  
<sup>4</sup> Doubtful *S*. <sup>5</sup> A long repetition *S*, *T*; but underlined *T*. <sup>6</sup> *Rep.* le Roy *S*.



PLEAS OF VARIOUS TERMS IN 3 EDWARD II.  
(A.D. 1310).

1A. WIKHAM *v.* CIRENCESTER (ABBOT OF).<sup>1</sup>

*Qu.* whether, against a charter witnessing that the King gave a tenement in frank fee, an averment of continuous seisin as part of the ancient demesne is admissible.

John of Wickham of the ancient demesne brought the little writ of right close according to the custom of the manor in the court of Aymer de Valence at Shrivenham against the Abbot of Cirencester and demanded certain tenements on his grandfather's seisin. The Abbot came and said that King Henry gave the tenements to the church of Cirencester. And he there produced the King's charter, which witnesses that the same King [gave] to the church of Cirencester the chapel of B. with all the land thereto belonging, whereof this land is parcel. [And the Abbot said that] for this reason he could not bring these tenements into judgment without the King. So a further day was given him. Then he went to the Chancery and made his suggestion that he was impleaded in the said court for tenements for which he had the King's charter, which charter could not be judged in that court, so that he could not bring the tenements into judgment in that court etc. So he had a writ to remove the action before the Justices of the Bench.

*Westcote.* The tenements are of the King's ancient demesne : ready [to aver] by Domesday. So we do not think that we ought to answer here by reason of the suggested cause for removal.

*Herle.* King Henry gave the chapel etc. with all the land thereto appendant to the church of Cirencester by his charter. Thus we tell you that the tenements in demand are contained in the charter, and, since the charter witnesses that the land, whereof these tenements

<sup>1</sup> Proper names from the record, of which a note is printed in the Appendix.

dout ceux tenemenz sunt parcele, demandoms jugement si a noil averement contre la chartre devez avenir.

*Fris.* En tens le Roy Richard et en tens le Roy Johane et due tens dout il ne ad memore nos auncestres les unt tenuz com auncien demeigne le Roy. Jugement.

*Herle.* Et nous jugement, desicom le Roy granta par sa chartre ove la terre appendaunt, dount<sup>1</sup> ceux tenemenz sunt parcel estre frankfee, ne vous ne moustrez fet due Roy ne d'autre qe pouwer en avoyt de changer la nature de la tenaunce. Jugement, si a noille averement devez estre r[eceu] encountre la chartre.

*West.* La ou vous dites qe le Roy Henri dona la chapel ov la terre etc., la dioms qe a cel tens etc. et puis cel tens nos auncestres seisis com de auncien demeigne tange l'Abbé predecessor ceti etc. disseisit nostre ael, qe heyr nous sumes etc., et de qi seisine nous demandoms ceo par bref de dreit.

# 1B. WICKHAM v. CIRENCESTER (ABBÔT OF).<sup>2</sup>

De recto secundum consuetudinem manerii ubi loquela fuit recordata per causam ad sectam tenentis in curia sua propria.

L'Abbé de Cic[estre] fist remuer un bref de dreit clos par un *recordari* en Baunk, le quel bref Willem de Wyham porta vers mesme celui Abbé en sa court demene, et demanda vers lui certeinz tenemenz en Burtone, par tele cause, pur ceo q'il avoit le manoir de S., de qei Burtone est membre, del doun le Roi Henri le Veyl par sa chartre, la quele chartre ne poeit illukes estre trié.

*Laufare* counta vers l'Abbé e tendi suite e dereigne solom la custume de cele court.

*Herle* defendi etc. Sire, l'Abbé vous dit q'il tient Burtone, ou les tenemenz sunt etc., com membre del manoir de S. del doun le Roi H[enri] le Veyl en pure e perpetuele aumoigne com del dreit de sa eglise de C. Jugement, si a tiel bref, qe n'est mie a la comune lei, deive respondre. (E mist avant la chartre le Roi qe ceo tesmoigne.)

*Laufare.* Les tenemenz sunt del auncien demene etc. e touz jours ont esté e furent en la seisine nostres auncestres : prest etc.

<sup>1</sup> terre appendout S,

<sup>2</sup> Text of this version from Y (f. 279d).

are parcel, is appendant to the chapel, we pray judgment whether you can get to any averment against the charter.

*Friskeney.* In the time of King Richard and in the time of King John and from time immemorial our ancestors have held these lands as ancient demesne. Judgment.

*Herle.* We too pray judgment, since the King by his charter granted that the chapel with the appendant land, whereof these tenements are parcel, should be frank fee; and you do not show any deed of the King or of anyone else who had power to change the nature of the tenancy. Judgment, whether you can be received to any averment against the charter.

*Westcote.* Whereas you say that King Henry gave the chapel with the land etc., we say that at that time and after that time our ancestors were seised as of the ancient demesne, until a certain predecessor of this Abbot disseised our grandfather, whose heir we are, and on whose seisin we demand these tenements by writ of right.

#### 1B. WICKHAM v. CIRENCESTER (ABBOT OF).

An abbot sued by little writ of right procures removal of the action on the ground that he holds in frank fee by royal charter. After count the demandant alleges that the tenements demanded are not comprised in the charter and contests this cause of removal.\*

The Abbot of [Cirencester] caused to be removed by *recordari* into the Bench a writ of right close, which writ William of Wyham brought against the Abbot in [the court of his lords\*] demanding against him certain tenements in Burton; and the cause [for removal] was that [the Abbot] held the manor of S., of which Burton is a member, by the gift of King Henry the Old by his charter, which charter could not be tried [in the court below].

*Laufer* counted against the Abbot and tendered suit and deraign according to the custom of this court.

*Herle* defended [and said]: Sir, the Abbot tells you that he holds Burton, where the tenements are, as a member of the manor of S. by the gift of King Henry the Old in pure and perpetual alms as of the right of his church of [Cirencester]. Judgment, whether he ought to answer to such a writ, which is not according to common law. (He produced a charter of the King which witnessed this.)

*Laufer.* The tenements are of the ancient demesne and were and have always been in the seisin of our ancestors: ready etc.



*Touth.* Vous ne avendrez mie encontre la chartre le Roi etc.

*Laufare.* Donque dioms nous qe ces<sup>1</sup> tenemens qe nous demandoms ne se sunt pas compris deinz cele chartre : prest etc.

*Herle.* A ceo ne avendrez mie, car vous mesmes si avez conté vers nous et par tant doné jurisdiction a tenir le play cy ; e vostre averement si est a tolir jurisdiction de ceste court e a retorn[er] arr[ere] etc., ou vous mesmes l'avez granté e accepté. D'autrepart la ou nous avoms fet remuer la parole cienz sur cause de la chartre le Roi etc., vous avez accepté la cause bone, et par tant accepté les tenemenz estre a la comune lei et donné poer a ceste court de conustre. Et depus que ceste bref clos, qe n'est mie a la comune ley, ne puet estre gar[ant] cienz a pleder etc., jugement si a tiel bref etc.

*Frisqen.* Vous mesmes si avez mis avant la chartre countre nous, issi qe nous deveroms respondre a cele chartre, et pus ceo qe nous contames et ne mie avant, par qei avant ceo qe nous la veymes, ne purrioms a ceo respondre. Jugement.

*Stant.* Il vous dient qe tut al commencement einz qe vous contestastes si deveriez vous avoir chalangé qe les tenemenz furent des auciens demeynes par qei ceste court ne avereit mie poer a tenir etc. Mès ore contestastes vous e affirmastes lour cause bone, la quele cause<sup>2</sup> si est contrarie a ceo qe vous ore tendez.

*Laufare.* Si nous eussoms chalangé a cel temps<sup>3</sup> etc., la court nous eust dit qe nous contissoms vers eux, qe avant le conte ne poeit la court estre ascerté de la demande. Et desicom la cause tut fust sur la chartre, et ceo ne purrioms savoir le quel ele fut verreye ou noun, einz ceo qe ele fust moustré,<sup>4</sup> n'entendoms mie q'il nous puissent ouster del averement.

*Herle* ut supra.

*Stant.* Il covent qe vous recevez cel averement, qe a ceo sumes nous acordez qe par son conte n'ad il mie granté vostre cause bone ne verreie etc.

*Lauf.* tendi l'averement ut supra.

*Herle.* Il mervolle<sup>5</sup> qe vous volez q'il plident par un bref qe eux mesmes ont abatu etc.

*Stantone.* Ont par tant abatu lour bref pur ceo q'il ount conté (*quasi diceret non*) ? Et pur ceo volez vous l'averement etc. ? Et dit ceste averement ne se taillera mie attrenche, einz serra tant-soulement de trier la cause, qe si la cause soit trové verreye, le bref se abatera, et si trové soit qe non, la parole serra remandé.

Et pus fut l'averement resceu de une part et d'autre etc.

<sup>1</sup> ceo Y.

<sup>2</sup> clause Y.

<sup>3</sup> teps Y.

<sup>4</sup> *Ins.* et Y.

<sup>5</sup> *Sic* Y.

*Toudeby.* You cannot get [to that] against the King's charter.

*Laufer.* Then we say that the tenements which we demand are not comprised in the charter : ready etc.

*Herle.* To that you cannot get, for yourselves have counted against us [here], and so have given jurisdiction to hold the plea; and then your averment is to take away the jurisdiction of this Court, which you have conceded and granted, and so to go back [from your admission]. Besides, whereas we had the plea removed because of the King's charter, you [by counting] have conceded that cause good and thereby have conceded that the tenements are at common law and given power of cognisance to this Court. And since this close writ, which is not at common law, cannot be a warrant for pleading here, [we pray] judgment whether to such a writ [we need answer].

*Friskeney.* You yourselves produced this charter against us, so that we ought to answer to it, and [to do so] after our count and not before, for before we saw it we could not answer to it. Judgment.

STANTON, J. They say that you ought to have challenged the cause [of removal] at the very beginning and before your count, saying that the tenements were not of the ancient demesnes so that this Court had no power to hold [the plea]. But you counted and so affirmed their cause [of removal] as good, and that cause is contrary to [the averment] that you tender.

*Laufer.* If we had made our challenge then, the Court would have told us to count against them, because before the count the Court could not be certified of the demand. And since the cause [of removal] was wholly in the charter, and we could not know whether or not it was true until we saw the charter, we do not think that they can oust us from the averment.

*Herle* as before.

STANTON, J. You [for the Abbot] must receive the averment. We are agreed about this, that by his count he did not concede your cause [for removal] to be good or true.

*Laufer* tendered the averment as above.

*Herle.* It is strange that you desire that they plead on a writ that themselves have abated.

STANTON, J. Have they abated their writ by counting? Not so. Will you receive the averment? And (said he) the averment will not be finally decisive. It will merely try the cause of removal; so that if the cause be found true, the writ will abate, and if not true, the suit will be remanded.

Afterwards the averment was received by both parties.

2. ARUNDEL (EARL OF) v. CHAUVENT.<sup>1</sup>

Besael, ubi tenens vocavit se ipsum ad warrantum, et stetit quia fuit par attorné.

Le Counte de Aroundel porta une bref de besael vers Johane de Chaunte<sup>2</sup> et Johane sa femme, qe viendrent en curt et vouchèrent a garant Johane le fiz Piers de Chaunte etc.

*Pass.* Il est mesme la persone q'il vouché, et il [est] en court et puit r[espondre] s'il veot. Jugement, si a ceo vouché devez estre receu.

*Herle.* Piers de Chaunt, qe<sup>3</sup> heir Johane<sup>4</sup> nous avoms vouché, dona les avanditz tenemenz a J. de Chaunte et a Johane sa femme et obliga ly et ses heirs a la garantie; et l'estat qe nous avoms si est de purchase. Jugement, si de ceo vouché devons estre ousté.

*Berr.* Est il par attorné ou en propre persoun?

*Herle.* Par attorné (*quasi diceret* si en propre persoun non deberet admitti ad vocandum se ipsum, nisi in<sup>5</sup> instanti warantizasset, set secus est hic.)

*Berr.* L'estat qe Johane et Jon unt, si est de purchase; et dount, si eux ne fussent receu a ceo vouché et<sup>6</sup> il perdissent, il ne avereynt pas a la value, quod durum esset pro muliere que war[antizatur] de statu quem<sup>7</sup> nunc habet.

Et vouché stetit.

3. GYSE v. BAUDEWYNE.<sup>8</sup>

De raptu mulieris. Coram Rege.

Johane de Gyse porta bref de ravissement de sa femme vers Adam de B. et alios die ante Conversionem S. Pauli quare Isabel sa femme vi et armis etc. rapuerunt cum bonis et catallis ad valenciam etc. abduxerunt etc.

*Lauf.* defendi le venir a force et as armes et quicquid contra pacem etc. et le ravissement et quanqe fut encountre le statut de ceo enproue<sup>9</sup> et dampna et dit: Vous ne poez action avoir par ceti bref qe cest Isabel qe vous nomez vostre femme est nostre femme, et fut

<sup>1</sup> Text from *S* (Hil.): compared with *T* (Hil.).

<sup>4</sup> *Ins.* qe *S*; q*i* *T*.

<sup>5</sup> *Om.* in *T*.

<sup>6</sup> *Om.* et *T*.

<sup>7</sup> que *S*, *T*.

*S* (Hil.): compared with *T* (Hil.).

<sup>9</sup> *Corr.* proven (?)

<sup>2</sup> Caunt' *T*.

<sup>3</sup> q*i* *T*

<sup>8</sup> Text from



## 2. ARUNDEL (EARL OF) *v.* CHAUVENT.<sup>1</sup>

A man who is present in court by attorney and not in person may in a proper case vouch himself.

The Earl of Arundel brought a writ of besael against John of C. and [Eve] his wife. They came into court and vouched to warrant John the son of Peter of C.

*Passeley.* He is the same person as his vouchee, and he is in court and can answer if he pleases. Judgment, whether you ought to be received to this voucher.

*Herle.* Peter, whose heir, John, we have vouched, gave the enements to John and [Eve] his wife and bound himself and his heirs to warranty; and the estate which we have is by purchase. Judgment, whether we ought to be ousted from this voucher.

BEREFORD, C.J. Is [John] here by attorney or in person?

*Herle.* By attorney. (The implication being that, had he been there in person he could not have been admitted to vouch himself, but must have warranted at once: but otherwise in this case.)

BEREFORD, C.J. The estate which John and [Eve] have is by purchase; and so, if they were not received to this voucher and they lost, they would have no recompense in value, and that would be hard upon the wife who is warranted in the estate that she now has.

The voucher stood.

## 3. GYSE *v.* BAUDEWYNE.

Ravishment of a wife. Doctrine of *de facto* marriage.

John of Gyse brought a writ for the ravishment<sup>2</sup> of his wife against Adam of B. and others, for that on the day before the Conversion of St. Paul they with force and arms ravished his wife with his goods and chattels to the value etc. and carried her off etc.

*Laufer* defended the coming with force and arms and all that is against the peace and the ravishment and all that is against the Statute in that case provided<sup>3</sup> and the damages. And (said he) you can have no action by this writ, for the Isabel whom you call your wife is our wife, and was so years and days before your writ was

<sup>1</sup> Proper names from the record, of which a note is printed in the Appendix.

<sup>2</sup> In the sense of forcible abduction.

<sup>3</sup> Stat. Westm. II. c. 34.

aunz et jours avaunt vostre bref purchacé et le jour qe vous av counté. Prest etc. Jugement si tiel suyt poussez vous avoir.

*Clav.* Qe Isabel fut nostre femme et nous seisi de ly com nostre femme le jour qe nous avoms counté. Prest etc. Estre ce vous mesmes avez suez<sup>1</sup> le devors en supposaut q'el ne deit est vostre femme, la quel suyt est unqore pendaunt. Jugement, si vo poussez dire q'el seit vostre femme.

*West.* La ou vous dittes qe nous suymes le devors et par ta nyent nostre femme, vous dittes mal. Et demandoms jugement, puis qe vous avez conue qe nous suymes pur fere le devors et la suyt unqore pendaunt et par consequent ele unqor nostre femme, si noille<sup>2</sup> contrarie a vostre conyssaunz devez estre r[espondu].

*Clav.* Cco n'est mye le grosse de nostre r[esponse] le devors einz dioms q'ele fut nostre femme le jour qe vous avez conté et aunz et jours avant fut nostre femme. Prest etc. quod tali die, anno, et loco fut esposé a nous et ov nous demura com nostre femme tanqe Johane de Gyse la ravyst a force issi qe nous venymes en tiel lewe et la trovames vestue de mesme la vesture qe nous la donames, et ele nous suyst. Et demandoms jugement *ut prius*.

*Brabason.* Donqe ne ravistes pas sa femme.

*Pass.* Q'el fut nostre femme esposé a nous tali die, anno, et loco : prest etc.

*Brab.* Si ele fut vostre femme ele ne fut pas la sowe.<sup>3</sup> Par qai vous poez dire qe vous ne ravistes poynt.

*Pass.* Statut ne don mye suyt au baroun si non par r[esoun] de chateux enportez ovesqe sa femme. Donqe dioms nous q'el est nostre emme esposé, par qai etc. la les esposailles se firent.

*Brab.* Ne apent my a cest court d'enquere ou les esposailles se firent ne nous ne mandroms al evesqe d'enquere etc. si ele fut vostre emme, einz coveynt qe vous respoignez si vous ravistes sa femme ou non.

*Pass.* Quod non : prest etc.

Et alii econtra.

Et notandum quod non pertinet habere breve facias venire xij. de visneto ubi duxi<sup>4</sup> spons[alia] fieri. Et durum etc.

<sup>1</sup> siwez T.

<sup>2</sup> nul T.

<sup>3</sup> sue T.

<sup>4</sup> Sic S, T; corr. dixit (?)

purchased and on the day of which you have counted. Ready etc. Judgment, whether you can have this suit.

*Claver* [for the defendant].<sup>1</sup> Isabel was our wife, and we were seised of her as of our wife on the day of which [you] have counted. Ready etc. Moreover, you yourself have sued a divorce, asserting that she ought not to be your wife, and that suit is still pending. Judgment, whether you can say that she is your wife.

*Westcote* [for the plaintiff]. Whereas you say that we sued a divorce and that therefore she is not our wife, you plead badly. And since you have confessed that we sued a divorce and that the suit is still pending and consequently that she still is our wife, we demand judgment whether you ought to be answered to anything that is contrary to your own admission.

*Claver* [for the defendant]. That about the divorce is not the substance of our answer; rather we tell you that she was our wife on the day of which you counted and years and days before it. Ready to aver] that on such a day in such a place she was espoused to us and lived with us as our wife, until the plaintiff ravished her by force, so that we came to such a place and there found her dressed in the clothes that we had given her, and she followed us. And as before we demand judgment.

BRABAZON, C.J. Then you did not ravish his wife.<sup>2</sup>

*Passeley* [for the defendant]. Ready [to aver] that she was our wife espoused to us on such a day at such a place.

BRABAZON, C.J. If she was your wife, she was not his. So you can say that you did not ravish her.

*Passeley*. Statute gives a suit to the husband only in respect of the chattels taken with the wife. So we say that she was our wife, and [pray that this be inquired by a jury of] the place where the espousals were made.

BRABAZON, C.J. It is not for this Court to inquire as to where the espousals were made, nor will we direct the bishop to inquire whether she was your wife, but you must say whether you ravished his wife or not.

*Passeley*. We did not. Ready etc.

Issue joined.

And note that the jury was not to come from the neighbourhood where the espousals [with the defendant] were said to have taken place. And this is hard [upon him].

<sup>1</sup> The easiest way out of a considerable difficulty is to suppose that Claver is for the defendant.

<sup>2</sup> Therefore you could plead the general issue.

4A. KENETON *v.* THORPE.<sup>1</sup>

Meen, ou aquitaunce de temps dount i n'i ad memorie fust alleggé et le defendaunt demaunda jugement de bref per coe qe ceux services descendirent a autre ij. soers et a lui: et le pleintif dit qe, après la mort l'auncestre le defendaunt, ceux services furent assignetz al defendaunt soul, et el avereit les profitz soul etc., par quei etc.

A. porta bref de meen vers B. et conta q'il tient de ly par homage et fealté et escuage, pur les queux il deit aquiter etc., la vient une C. et li distreint pur xl. s. de relief et pur suyt a sa curt.

*Mugg.*<sup>2</sup> Quai avez de l'aquitance?

*Launf.* Vous estes seisi de nos serviz et vous et vos aunecestres nous aquiterent de mesme les serviz.

*Roston.* Il demande l'aquitance en le dreit, et il ne moustre especialté ne ne dit qe nous li avoms aquité en court qe port recorde ne ne tient de nous par seut. Jugement.

*Launf.* Et nous jugement, de puis qe vostre auncestre, qe<sup>3</sup> heyr vous estes, nous ad aquité de mesme les serviz et nos serviz sunt a vous assignez a vous en vostre purpartie, et vous est heyr due saun et seisi de nos serviz, si vous ne nous devez aquiter. Et d'autrepar vous et vos aunecestres seisi de nostre homage et de nostre escuage et de nos aunecestres ser[viz] qe dounent garde etc.

*Migg. ut prius* et demandoms jugement.

*Berr.* Demorez la et vous averez tost jugement (en supposar q'il l'aquyterait de puis qe ly et ses aunecestres l'aveynt aquité de mesme les serviz).

*Migg.* pria eide de C. et A. et habuit.

4B. KENETON *v.* THORPE.<sup>4</sup>

Un home porta soun bref de meen vers un A., qe vient en court demaunda pur quey il luy voilleit lier al aquitaunce.

*Denom.* Seisi de nostre homage.

*Migg.* Sire, vous avetz entendu coment il ount demaundé un aquitaunce de releef et de homage et de seute, et n'ad ren de nous l'al aquitaunce sy noun resceite de homage; et desicome resceyte

<sup>1</sup> Text of this version from *S* (Hil.): compared with *T* (Hil.). Headnote from *B.* <sup>2</sup> *Migg. T.* <sup>3</sup> *qi T.* <sup>4</sup> *Vulg. p. 76.* Text from *B* (Hil.).



4A. KENETON *v.* THORPE.<sup>1</sup>

Discussion of the principle upon which in the absence of specialty a lord may be bound to acquit his tenant against the demands of an overlord, either because the lord has heretofore acquitted the tenant or because he has received homage and service from the tenant.

A. brought a writ of mesne against B. and counted that whereas A. holds of B. by homage and fealty and escuage, for the which B. ought to acquit him etc., there came one C. and distrained for forty shillings by way of relief and for suit to his court.

*Miggeley.* What have you to prove the duty to acquit?

*Laufer.* You are seised of our services and you and your ancestors have acquitted us of the services [demanded.]

*Ruston.* The demand is 'in the right,' and he shows no specialty and does not say that we have acquitted him in a Court that bears record or that he holds of us by suit. Judgment.

*Laufer.* And since your ancestor, whose heir you are, has acquitted us of the same services, and our services are assigned to you in your share of the inheritance,<sup>2</sup> and you are heir of blood and seised of our services, we demand judgment whether you ought not to acquit us. Besides, you and your ancestors were seised of our homage and our escuage and of services by our ancestors such as give wardship [and marriage.]

*Miggeley* repeated what he had said and demanded judgment.

BEREFORD, C.J. You will soon have judgment if you demur there. (Meaning that B. would have to acquit A., since B. and his ancestors had acquitted A. from the same services.)

*Miggeley* prayed aid of [his parceners], and it was granted.

## 4B. ANON.

A man brought his writ of mesne against one A., who came into court and asked by what he was bound to the duty of acquitting.

*Denom.* You are seised of our homage.

*Miggeley.* Sir, you have heard how they have demanded acquittance from a relief and from homage and from suit, and they have nothing whereby to bind us to the acquittance except receipt of

<sup>1</sup> This case is Fitz., *Ayde*, 163, and *Mesne*, 45. Proper names from the record.

<sup>2</sup> This is explained by the second report of this case.

services ne lie nul home al aquitaunce sy noun de mesmes les services q'il ad receu, seil. homage pur homage, feuté pur feuté, sute pur sute rente pur rente, releef pur releef, et nous bie lyer de sute et d'autres services qe nous n'avoms pas receu, jugement sy saunz moustrer autre especialté de nous lier, sy ver nous l'aquitaunce puissent dereigner.

*Denom.* Nous tenimes de vostre auncestre par homage, feuté, rente et releef, et yl seisi par mye nostre mayn, et vous seisi par my nostre mayn del homage. Et depuys qe nous tenoms de vous par services de chivalier, et vous resceutes de nous releef, vous nous devetz aquiter de releef.

*Migg.* Jugement de vostre bref. Vous bietz dereigner de nous les services enters come vers un soul heir nostre auncestre. Et vous dyoms qe nous avoms parceniers, A. et B., nyent nometz el bref. Jugement, si tiel aquitaunce puissetz vers nous soul dereiner par resceite des services en temps nostre auncestre.

*Denom.* Nos services après la mort vostre auncestre vous furent assigneez a vostre purpartie, et vous estes seisi parmy nostre mayn et avietz soul les appruementz. Jugement.

*Ber.* Il vous dit q'il est vostre tenant, et vous soul avetz les appruementz come de garde et mariage soul, et s'yl fait felonie vous soul averez l'eschete. Par quei, auxint come vous soul averez les appruementz, vous soul averez la charge.

*Migg.* issit d'emparker, et revyent et dit qe, la ou il demaunde vers nous aquitaunce des services, q'est en le droit, nous avoms parceniers J. et A. saunz qi nous ne poms respoundre; et prioms eyde de eux.

*Denom.* Qaunt a les services des queux vous avetz esté seisi par my nostre mayn come de homage, releef, de ceux services ne devetz ayde aver, qar des services qe vous avietz ore receu de nous vous nous devetz aquiter saunz eyde aver. En droit de la sute, qe de nous est demaundé et dount nous demaundoms l'aquitaunce, nous grauntoms ayde. En droit des autres services q'il ad receu de nous, dount il soul ad esté seisi, nous demorroms en <sup>1</sup> vos agardz sy eide doit aver.

*Scrop.* Qaunt l'eyde vendra pletetz adounqe l'un et l'autre.

#### Note from the Record.<sup>2</sup>

De Banco Rolls, Easter, 3 Edw. II. (No. 181), r. 271, Suff.

John of Thorpe in mercy for various defaults.

The same John was summoned to answer Nigel of Keneton of a plea that he acquit him of the service that Margaret, wife that was of Edmund

<sup>1</sup> et B.

<sup>2</sup> See vol. ii. p. 181; vol. iii. pp. 72, 110.

and since receipt of services binds no man to an acquittance of the same services, to wit, homage for homage, fealty for suit, rent for rent, relief for relief, and [they] wish us as regards suit and other services such as we have not we demand judgment whether, without showing specialty, deraign acquittance against us.

*Denom.* We held of your ancestor by homage, fealty, rent, and he was seised by our hand, and of homage you were seised by our hand. And since we hold of you by knight's service and you demand relief from us, you ought to acquit us from relief.

*Miggeley.* Judgment of your writ. You desire to deraign against [us from] the entire services as though we were sole heir of your ancestor. We tell you that we have parceners, A. and B., not named in the writ. Judgment, whether you can deraign an acquittance against us by ourselves by reason of a receipt of services in the time of our ancestor.

*Denom.* After your ancestor's death our services were assigned to your share and you are seised by our hand, and only you have the profits. Judgment.

*BEREFORD, C.J.* He tells you that he is your tenant and that you alone have the profits, as for instance ward and marriage, and if he commits felony you alone will have the escheat. Therefore, as you alone have the profits, you alone must bear the charge.

*Miggeley* went out to imparl, and came back and said: Whereas he demands against us acquittance of the services, which is 'in the right,' we have certain parceners without whom we cannot answer and we pray aid of them.

*Denom.* As to the services of which you have been seised by our hand, to wit, homage and relief, of those you ought not to have aid, nor of the services which you have yourself received of us you ought to acquit us without having aid. As to the suit [of court] which is demanded from us, and from which we demand an acquittance, we concede the aid. As to the other services which he has received from us, and of which he by himself has been seised, we will abide your arguments whether he should have aid.

*SCROPE, J.* When the aid comes, both of you can plead about that.

**Note from the Record (*continued*).**

Adam of Cornwall, exacts from him of his free tenement which he holds of Nigel in Keneton and Debenham, whereof John, who is mesne between Nigel and Adam, ought to acquit him. Nigel, by Adam of Westhale his attorney, says

Note from the Record (*continued*).

that, whereas he holds of John a messuage, a hundred and two land, forty of wood, twelve of meadow, and fifty shillingworths the said vills by homage and fealty and the service of one knight all service, by (*per*) which services John ought to acquit him men (*quoscunque*), Margaret distrains him to do suit to her court from three weeks to three weeks, and for a relief of one knight's the death of Sarra, wife that was of Roger, son of Peter, son of O default of acquittance by John : damages, twenty pounds. And the produces suit etc.

John, by Simon of Hedersete his attorney, after formal defence, d that Nigel show whether he has any specialty (*speciale factum*) where is bound to acquit him against Margaret of the said services.

Nigel says that John is seised of his homage, fealty, and services said tenements, and that for those services John formerly acquitted him and he says also that all John's ancestors, from time of which there memory, were seised of the homage and fealty and the said services the hands of Nigel's ancestors, and for those services acquitted them of services against all men ; and he says indeed that one Sarah, sometime of Roger, son of Peter fiz Oubern, ancestor of John, one of whose heirs is, was seised of the homage and services of one Ivo of Keneton, Nigel

5A. MARESCHAL *v.* LOVEL.<sup>1</sup>

Breve de forfeiture de mariage : seisine du corps traversé.

A. porta breve de forfeiture de mariage vers B., et dit tancome<sup>2</sup> fut en sa garde ili tendi covenable mariage saunz disparagacion, il refusa, et les teres q'il tient de ly entra encontre sa volonté, et se biens et ses chateux etc. a l'amontance etc. prist et enporta a ses damages etc. a tort et encontre le statut.

*Denom.* Qaunt a les biens, de rien coupable. Qaunt a l'autre vous dioms nous qe nous tenoms certeynz tenemenz de un A. par fee chivaler, le quel en clam[ant] garde de nous happa la garde de nostre corps, et dona le mariage a un W., le quel W. nous maria a sa se et prist les profiz due mariage. Et desicom il puit avoir son recoy vers celi qe li deforça la garde, jugement si vers nous puit avoir avere.

*Herle.* Nostre action se lye sur iij. choses, scil. qe vous

<sup>1</sup> Text of this first version from *S* (Hil.) : compared with *T* (Hil.).  
com *T*.



Note from the Record (*continued*).

father, whose heir he is, for the said tenements, and Sarah, together with Roger her husband, for the said services acquitted Ivo against all men; and that after the death of Roger and Sarah, her inheritance descended to the said John and to Roesia, wife of Edmund of Pakenham, and to Cecilia, wife of Robert of Ufford, as cousins and heirs of Sarah; and that the inheritance was divided among the said heirs so that Nigel's service was assigned entirely to John for ever; and that by virtue (*pretextu*) of the assignment Nigel attorned himself of his homage and fealty for the said tenements to John; and for this reason John is bound to acquit Nigel of the said services.

John fully confesses that he is one of Sarah's heirs, and that he is seised of Nigel's service; but he says that he cannot answer Nigel of this matter without Edmund, Roesia, Robert, and Cecilia, his parceners. And he prays aid of them. Therefore let them be summoned to be here three weeks after Michaelmas.

Afterwards, the process having been continued to the octave of St. Martin, A. R. 5, Nigel and John come by their attorneys; and Robert of Ufford and the others do not come; and they had a day here on this day by their essoiners to answer along with [John] etc. Therefore let John answer without them. And upon this, at the prayer of the parties, a day, without any essoin, is given to Nigel and John here a month from Easter for this plea, in the same state as now.

5A. MARESCHAL *v.* LOVEL.<sup>1</sup>

In an action for forfeiture of marriage it is a good plea that the plaintiff was never seised of the defendant's body.

A. brought his writ of forfeiture of marriage against B., and said that, while B. was in A.'s wardship, A. tendered to B. a suitable marriage without disparagement, but B. refused it, and against A.'s will entered the lands which he held of A. and took and carried off his [A.'s] goods and chattels etc. to the amount etc. to his damage etc. wrongfully and against the Statute.<sup>2</sup>

*Denom.* As to the goods, not guilty. As to the rest we say that we hold certain tenements of one [X.] by knight's fee, and that he, claiming wardship of us, 'happed' the wardship of our body, and gave our marriage to one W., who married us to his sister and took the profits of the marriage. And since you can have your recovery against him who deforced you of the wardship, we pray judgment whether you can have action against us.

*Herle.* We lay our action upon three facts, that you were in our

<sup>1</sup> This case is Fitz., *Accion sur lestatut*, 27. Proper names from the record.

<sup>2</sup> Stat. Mert. c. 6.

nostre garde esteaunt, vous offrams covenable mariage, et vous le refusastes ; a qi vous ne r[esponez] pas. Jugement. (Et fut chacé de la curt a dire outre etc.)

*Denom.* Nous vous dioms qe nous sumes marié auxi com nous avom dit, issi qe vous ne fustes unqes seisi due corps *nomine custodie*. Prest etc.

Et alii econtra.

### 5B. MARESCHAL v. LOVEL.<sup>1</sup>

Un A. porta bref de forfeiture de mariage.

*Denon.* Nous tenom de un B. etc., que seisi de la garde etc., et pus lessa la garde et la mariage a un C., le quel C. nous maria a un S. sa soere, issi que nous fumes marié sanz ceo q'il fut seisi de nous. Prest etc.

*Hedon.* Quei responez a ceo que vous tenetz de nous par services de chivalerie et nous vous tendimes mariage ?

*Ber.* Il vous dit que vous ne fustes mie seisi de ly, et ceo que vous n'aviez mie ne poetz doner ne graunter.

*Hedon.* Nous voloms averer que soun auncestre tent de nous par services de chivalerie que devient garde, et que nous vous tendimes mariage sanz estre desparagé. Jugement.

*Denon.* Vous ne fustes nent seisi de nous. Prest etc.

*Hedon.* Nous fumes seisi de vous, et vous tendimes mariage sanz etc., et vous la refusastes. Prest etc.

Et sic ad patriam.

### Note from the Record.

De Banco Rolls, Easter, 3 Edw. II. (No. 181), r. 117d, Northumb.

Hugh, son and heir of Henry Lovel, in mercy for divers defaults.

The same Hugh is attached to answer Fergus le Mareschal of a plea why (whereas the wardship of the lands and tenements which belonged to Henry in Middleton by (*iuxta*) Beleford<sup>2</sup> together with the marriage of Hugh, while Hugh was lately within age, belonged to Fergus, as Henry held his land of him by military service, and Fergus had often offered to Henry while he was within age and in his wardship a competent marriage without disparagement), Hugh utterly refusing such marriage, and no satisfaction for the marriage having been made to Fergus, intruded himself into the said lands and tenements against the form of the statute for such marriages provided, and by force and arms took and carried away the goods

<sup>1</sup> Text from *L* (Pasch.).

<sup>2</sup> Middleton by Belford,

wardship, that we offered you a suitable marriage, and that you refused it; and to this you make no answer. Judgment. (And he [Herle] was driven by the Court to plead over.)

*Denom.* We tell you that we were given in marriage as we said before, so that you were never seised of our body by way of wardship. Ready etc.

Issue joined.

### 5B. MARESCHAL *v.* LOVEL.

One A. brought a writ of forfeiture of marriage.

*Denom.* We hold of one [X.], who was seised of the wardship and then demised the wardship and marriage to one [W.], who married us to one S. his sister, so that we were married without your having been seised of us. Ready etc.

*Hedon.* What say you to our assertion that you hold of us by knight's service and that we tendered you a marriage?

BEREFORD, C.J. He says that you were not seised of him, and you cannot give or grant what you have not got.

*Hedon.* We will aver that his ancestor held of us by knight's service which owes wardship, and that we tendered him a marriage without disparagement.

*Denom.* You were never seised of us. Ready etc.

*Hedon.* We were seised of you and tendered you a marriage without disparagement, and you refused it. Ready etc.

And so to the country.

### Note from the Record (*continued*).

and chattels of Fergus found in the lands and tenements to the grave damage of Fergus and against the peace etc. And thereupon Fergus, by his attorney, complains that (whereas Henry, father of the said heir, held of him five messuages, sixty-six acres of land, six acres of meadow, and forty-one shillingworths of rent with the appurtenances in the said vill of Middleton, by homage, fealty, and the service of six shillings and eight pence, and by the service of a sixth part of one knight's fee, to wit, six shillings and eight pence when the king's scutage runs at forty shillings, and so in proportion, and died in Fergus's homage, and thereby the wardship of the lands and tenements which were Henry's, together with the marriage of Hugh while he lately was under age belonged to Fergus, and Fergus, while Hugh was under age and in his wardship, had often offered him a competent marriage without disparagement, to wit Joan daughter of James

**Note from the Record** (*continued*).

of Houburne, at Wollovere<sup>1</sup> in the said county on [July 18, 1303] Thursday next before the feast of St. Margaret the Virgin in 31 Edward [I.] in the presence of Thomas of Roke and Philip of Hagardeston, and had again offered him the same Joan at Skremerston<sup>2</sup> in the same county on the Monday next following, in the presence of Robert of Belingham and Adam Scharpe), Hugh utterly refusing such marriage, and no satisfaction etc. for the marriage etc. on [Sept. 1, 1307] the Friday next after the feast of St. Augustin in 1 Edw. [II.], intruded himself against the form of the statute etc. and by force and arms took and carried away the goods and chattels of Fergus, to wit, wheat, barley, oats, and brazen vessels to the value etc. against the peace etc. ; and thereupon he says that he is deteriorated and has damage to the value of one hundred marks ; and thereof he produces suit.

And Hugh, by his attorney, comes and defends tort and force when etc. ; and he says that Henry held some tenements of one Richard Lovel by military service and died in his homage, and therefore Richard, after Henry's death, seised the body of the said heir and sold his wardship and marriage to one Robert Lovel, and Robert, being seised, sold the wardship

**6. ANON.**<sup>3</sup>

Forme de don en le decendere : et pur ceo q'il ne se fit heir de dreyn seisi, le breve abati.

Johane<sup>4</sup> de M. porta breve de forme de don vers Thomas Malb', et dit qe un Johane<sup>5</sup> fut seis et dona a W. de T. et les heirs de son corps engendré et que post mortem W. et M. et Isabele feille<sup>6</sup> W. a mesme cel Johane<sup>7</sup> feille et heire W. descendere debet per formam etc.

*West.* Ceti breve est doné en leu de mordauncestre ou le demandant se fra heyre de dreyn seisi. Et nous vous dioms qe M. et I. après la mort W. lour pere furent seisiz et fesitynt la purpartie. Par quai el se dot<sup>8</sup> aver fet heyre a M. et I.

*Toud.* Jeo moy fra heire a celi a qi le don se fit, après qi mort les tenemenz moy deyvent descendre. Et d'autrepart jeo ne poay aver le mordauncestre de la seisine ceus.

Et puis fut la femme examiné si les seors furent seisiz et si la purpartie fut faite, et el dit qe oil. Par quai fut agardé quod nichil capiat etc.

<sup>1</sup> Mod. Wooler.    <sup>2</sup> Mod. Scremerston.    <sup>3</sup> Text from *S* (Hil.): compared with *T* (Hil.).    <sup>4</sup> Johan *T.*    <sup>5</sup> Johan *T.*    <sup>6</sup> fill' *T.*    <sup>7</sup> Johane *T.*    <sup>8</sup> doit *T.*



Note from the Record (*continued*).

and marriage to one Robert of Maners, and he married (*maritavit*) the heir; and he says that, whereas Fergus by his writ and count supposes that Hugh was in his wardship, Fergus was never seised of Hugh before the time when Robert of Maners married Hugh, as aforesaid; and this he is ready to aver etc.; and inasmuch as Fergus charges upon him that he took and carried off his goods and chattels, he [Hugh] says that he did not take or carry away any goods or chattels of Fergus against the peace etc.; and of this he puts himself upon the country etc.

And Fergus says that he was seised of the wardship of the said heir, and to the said heir, so being in his wardship, he offered a competent marriage as aforesaid, which Hugh utterly refused, and intruded himself into the tenements, no satisfaction having been made to Fergus for the marriage, against the form of the statute etc., and by force and arms took and carried away the said goods and chattels found in the tenements against the King's peace, as he [Fergus] complains; and he prays that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded for the quindene of St. Michael.

## 6. ANON.

In a formedon in the descender the writ should make the demandant heir to the person last seised.

Joan of M. brought a writ of formedon against Thomas M., and said that one John was seised and gave to William of T. and the heirs of his body begotten, and that the tenements after the deaths of William [the donee] and of M. and Isabel his daughters<sup>1</sup> ought to descend to the demandant as daughter and heir of W. by the form of the gift.

*Westcote*. This writ is given in lieu of a mortdancestor, in which the demandant must make himself heir to the person last seised. And we tell you that after the death of their father William, M. and Isabel were seised and made partition. So she should have made herself heir to M. and Isabel.

*Toudeby*. I have to make myself heir to the donee, upon whose death the tenements are to descend to me. Besides, I could not have a mortdancestor on the seisin of these [women].<sup>2</sup>

And afterwards the woman [*i.e.* the demandant] was asked whether her sisters were seised, and whether partition was made. She said: Yes. So it was awarded that she take nothing.

<sup>1</sup> But the text at this point is not quite satisfactory. seised in fee simple. This case looks much like one reported in vol. i.,

<sup>2</sup> Apparently because they were not p. 170.

7. ANON.<sup>1</sup>

Breve de droit porté vers persone de Seint Eglise : visus petitur : et non habuit, quia alias recuperavit eadem tenementa per breve de *utrum* : et post petiit auxilium : et habuit.

En un bref de droit remué de <sup>2</sup> fraunchise de Everwike per *pone*. Et Johane la persone de Touzseyns demanda la vewe, pur ceo q'il fut enpledé de novel par le *pone*. Et non habuit, quia ipse recuperavit eadem tenementa prius per breve de *utrum* versus petentem quod <sup>3</sup> non debet ignorare etc.

*Roston*. Le <sup>4</sup> tenemenz sunt le droit de nostre eglise, et ne poms respondre saunz nostre ordinarie, et prioms eide.

*Pass*. Eide ne devez avere, car vous ne trovastes vostre eglise seisi. Jugement.

*Hervy*. Coment q'il ne trova sa eglise seisi, il recovera ceus tenemenz par breve de *utrum* com le droit de sa eglise. Dont il ne put respondre saunz ordenarie.

Et habuit auxilium.

8. ANON.<sup>5</sup>

Nota voucher et garantie par statut secundum statum tenementi tempore alienacionis.

Une F. enfeffa un A. de un toft nient edifié, et le edifia, et puis fut enpledé par un T. A. voucha a garaunt un A. frere F., qe vient en curt et demanda par quai. A. myst avaunt chartre son frere, qe voleit garanti.

*Le garant*. Mon frere vous vendi le toft nient enherité.<sup>6</sup> (Et issi le rendi.)

*Berr*. Par quai agarde la curt qe le demandant recovere vers le tenant et le tenant a la value de toft nient herité <sup>7</sup> etc.

<sup>1</sup> Text from *S* (Hil.): compared with *T* (Hil.). <sup>2</sup> du *T*. <sup>3</sup> *Sic S, T*.  
<sup>4</sup> Les *T*. <sup>5</sup> Text from *S* (Hil.): compared with *T* (Hil.). <sup>6</sup> *Sic S, T*; enhabite *Fitz.*; *corr.* edifie. <sup>7</sup> *Sic S, T*; enhabite *Fitz.*; *corr.* edifie.

7. ANON.<sup>1</sup>

A parson sued by writ of right is allowed aid of the ordinary, for, though he did not find his church seised, he had already recovered the land by a writ of *utrum*.

A writ of right was removed by *pone* from the court of the franchise of York. John the parson of All Saints demanded a view on the ground that he was impleaded afresh by the *pone*. It was not granted, for he had formerly recovered the same tenements against the demandant by a writ of *utrum*, and therefore could not be ignorant [as to what tenements were in demand.]

*Ruston*. The tenements are the right of our church, and we cannot answer without our ordinary. We pray aid of him.<sup>2</sup>

*Passeley*. You ought not to have aid, for you did not find your church seised. Judgment.

STANTON, J. Albeit he did not find his church seised, he recovered these tenements by a writ of *utrum* as of the right of his church. So he cannot answer without the ordinary.

Aid granted.

8. ANON.<sup>3</sup>

The recompense in value due from a warrantor is measured by the state of the tenements at the time of the warranty.

One F. enfeoffed one A. of a toft not built upon, and [A.] built upon it and afterwards was impleaded by T. A. vouched to warrant a brother of F. He came into court and asked why. A. produced his brother's charter, which contained a warranty.

*The warrantor*. My brother sold you the toft not built upon. (And thereupon he rendered it to the demandant.)

BEREFORD, C.J. Therefore the Court awards that the demandant recover against the tenant, and that the tenant recover [against the warrantor] the value of the toft when unbuilt upon.

<sup>1</sup> This case is Fitz., *Ayde*, 164, and *View*, 141.

<sup>2</sup> According to Fitzherbert's note, the

aid prayed was of patron and ordinary.

<sup>3</sup> This case is Fitz., *Recovere en value*, 8.

9. ANON.<sup>1</sup>

Faus jugement, ou le pleintif ne fut my receu d'averer qe le jugement fut autre qe le recorde dit : par *Berr.*

A. porta breve de fauz jugement et dit qe fauz jugement ly fut rendue en le counté de E. Et les iiij. chevalers recorderent la parole et avoynt<sup>2</sup> le jugement.

A. dit qe le jugement rendue en conté fut autre qe le recorde, et ceo tendi d'averere. Set non potest admitti per *Berr.*; mès fut agardé q'il preyst rien par son breve; nyent plus qe si les seuters de un court avowent un jugement par r[eson] de lour usages, le pleyntif ne serra my receu d'averere qe les usages ne sunt my teux : par *Hyng*<sup>3</sup> et *Berr.*<sup>4</sup>

10. CARPENTER v. TILLOY.<sup>5</sup>

[*Accedas ad curiam.*]

Les suters de la court l'Abbé de Cicestre furent destreyntz a recorder une parole qe fust en la court l'Abbé, qe fust remué a la seute le defendaunt.<sup>6</sup> Lez suytiers vindrent en court et fesoyent le recorde. Et fut le recorde q'il fut somouns en play de nussaunce ou la partie se pleynt q'il avoyt levé un mur, issi qe par cel mur l'ewe cheye sur sa meson, par quei sa meson fust defete, et issi nussaunce etc. Le defendaunt dit qe le mur fust levé avant qe le pleyntif avoit nul franktenement illoques, et de ceo se mistrent en enqueste. L'enqueste prise, ou trové fust q'il avoit levé la mur a<sup>7</sup> nussaunce etc. Par quei fust agardé qe la nussaunce fust ousté et q'il recoverast cez damages.

*Hedon.* Nous voloms averer qe le recorde ne fust pas tiel com il dist, qar qaunt nous fumes somons, nous venimes en court et

<sup>1</sup> Text from *S* (Hil.): compared with *T* (Hil.).    <sup>2</sup> *Sic S, T; corr.* avouwerent.

<sup>3</sup> King *T.*    <sup>4</sup> It seems possible that this report consists of dicta delivered in the case that follows. We thought it desirable to print the two next each other.

<sup>5</sup> Text from *L* (Pasch.).    <sup>6</sup> descend' *L.*    <sup>7</sup> *Om. a L.*



9. ANON.<sup>1</sup>

When a county court is called upon to bear record of an action, an averment by the country is inadmissible against the record borne by the representative suitors.<sup>2</sup>

A. brought a writ of false judgment and said that a false judgment was rendered against him in the county of E. And the four knights recorded the suit and [avowed] the judgment.

A. said that the judgment rendered in the county was different from their record, and this he tendered to aver. But BEREฟอร์ด, C.J., would not receive the averment, and awarded that A. took nothing by his writ. And similarly *per* HENGHAM<sup>3</sup> and BEREฟอร์ด, if the suitors of a court avow a judgment by reason of their usages, the plaintiff shall not be received to aver that the usages are not such as they record.

10. CARPENTER *v.* TILLOY.<sup>4</sup>

No averment against the record of suitors.

The suitors of the court of the Abbot of Cirencester were distrained to bear record of an action which came into the Abbot's court and which was removed at the suit of the defendant. The suitors came and bore record and their record was as follows:—The defendant was summoned in a plea of nuisance in which the plaint was that he had erected a wall so that by reason of the wall water fell upon the house of the plaintiff, whereby that house was damaged, and thus there was a nuisance. The defendant said that the wall was erected before the plaintiff had any freehold there. Of that they put themselves upon an inquest. The inquest was taken, and it was found that [the defendant] had erected the wall to the nuisance etc. Therefore it was awarded that the nuisance should be abated and that [the plaintiff] should recover his damages,

*Hedon.* We will aver that the record was not as [they] say, for, when we were summoned, we came into court and said that this

<sup>1</sup> This case is Fitz., *Averment*, 44.

<sup>2</sup> Wager of battle had been the appropriate method of contesting the record.

<sup>3</sup> Perhaps the late chief justice had

said this in an earlier case. The reference may be to an advocate, but it does not seem likely that his name would be put in front of Bereford's.

<sup>4</sup> See note 4 on the opposite page.

disoymes qe ceo fust appendaunt a nostre franktenement et ne devoms respondre saunz comaunde nostre seynur le Roy. Et nient encountre esteaunt, si alerent il avant en le play et agarderent qe le mur fut abatu saunz enqueste prendre. Et ceo volom nous averer.

*Ber.* Aillent le suytiours a meson et les parties demurgent.

Et non fuit verificacio admissa.

*Hedon* chalenga queux ne porreyent la parole recorder, pur ceo qe toutz lez suters ne furent pas la.

*Ber.* Vous serriez mout amendé si fussent toutz la. (Et fut recordé de ceux que furent la etc.)

#### Note from the Record.

De Banco Rolls, Easter, 3 Edw. II. (No. 181), r. 39, Glouc.<sup>1</sup>

The sheriff was commanded that, taking with him four discreet and lawful knights of his county, he should in his proper person go to the court of the Abbot of Cirencester at (*de*) Cirencester, and in the full court there cause to be recorded the suit which was in the same court without the King's writ between Henry le Carpenter of Cirencester and Thomas de Tilloy touching a certain wall in Cirencester wrongfully raised by Thomas, whereof Thomas complains that a false judgment was made against him in the said court, and should have that record here under his seal and by (*per*) four lawful men of that court of those who were [present at the making of that] record. And the process having been continued, the sheriff was commanded that he should distrain all the suitors of the court by their lands etc. and that of the issues etc., and that he should have their bodies here at this day, to wit, in the quindene of Easter etc.

And now come Thomas and Henry by their attorneys and [twenty-four names] suitors of the court; and they proffer a record of the suit in these words:

'Record of a suit made at the court of the Abbot of Cirencester in Cirencester held there on [Sept. 7, 1308] Saturday next before the feast of

#### 11. ST. GREGORY YORK (PARSON OF) *v.* BETEWYNDE.<sup>2</sup>

*Utrum.* Bref chalangé.

Johane Romaine<sup>3</sup> persoun del eglise de Saint Gregore<sup>4</sup> de Everwyke porta bref de juré de utrum vers Wauter de Wetewynd<sup>5</sup> tresorere de la mesoune de Saint Pere<sup>6</sup> de Eboraco, et pria que re-

<sup>1</sup> For earlier enrolments, see De Banco Rolls, No. 173, Roll 36, and No. 174, Roll 136.\* <sup>2</sup> Text from *S*: compared with *T*. <sup>3</sup> Romaine *T*. <sup>4</sup> Gregoire *T*.

<sup>5</sup> Betewynd *T*. <sup>6</sup> Piere *T*.

matter concerned our freehold and that we ought not to answer without the King's command.<sup>1</sup> But none the less they proceeded in the plea, and, without taking any inquest, awarded that the wall should be abated. And this we will aver.

BEREFORD, C.J. Let the suitors go home and the parties remain. And the averment was not received.

*Hedon* challenged [the suitors who appeared] as not being able to record the action, because all the suitors were not there.

BEREFORD, C.J. Much better off you would be if they all were there!<sup>2</sup> (And the record was that of the suitors who appeared.)

**Note from the Record** (*continued*).

the Nativity of B. Mary in 2 Edward [II.] between Henry le Carpenter of Cirencester and Thomas Tylooy touching a wall in Cirencester wrongfully raised (so it is said) by Thomas.'

'At the court of the Abbot of Cirencester held there on [April 13, 1308] Saturday the vigil of Easter in 1 Edward [II.] Thomas Tylooy was summoned by the bailiff of the court to answer Henry le Carpenter of a plea of nuisance, security having first been taken of Henry to prosecute this plea according to the custom of that manor. On that Saturday the vigil of Easter, Henry came and complained of Thomas that he wrongfully raised a wall in Cirencester, to the length of one hundred feet and the breadth of two feet and a half, to the nuisance of the free tenement which he holds of the ancient demesne of the crown of England according to the custom of the manor of Cirencester, to Henry's damage of a hundred shillings: to wit, whereas Henry holds his house in Cirencester contiguous to the wall of Thomas, Thomas raised the wall higher than Henry's house, so that by the water descending from Thomas's wall upon Henry's house, Henry's house is altogether inundated and deteriorated, to his damage of a hundred shillings; and thereof he produces suit.'<sup>3</sup>

11. ST. GREGORY YORK (PARSON OF) *v.* BETEWYND.<sup>4</sup>

A writ of *utrum* upheld, though the tenant asserts that the land is the frankalmoin of a cathedral of which he is treasurer.

John Romain, parson of the church of St. Gregory of York, brought his writ for a *iurata utrum* against Walter de Betewynd, treasurer of the [church] of St. Peter of York, and prayed that it might be inquired

<sup>1</sup> That is, without a royal writ.

<sup>2</sup> These last sentences can be read in more than one way.

<sup>3</sup> *Cras* is set in the margin.

<sup>4</sup> Proper names from the record, of which a note is printed in the Appendix.

conue fut si taunt de tenemenz seyent la franche almoygne de sa eglise de Saint Gregore etc. ou ley fee mesme cely Wauter.

*Hert.* Ceus tenemenz sunt de la fraunche almoygne<sup>1</sup> de la eglise de Saint Pere, ou il poeit avoir eu soun bref le quel il seyent le fraunche almoygne de sa eglise de Saint Gregore ou le fraunche almoygne de la eglise de Saint Pere. Jugement due bref.

*Caunt.* De vostre tenauntz<sup>2</sup> le quel vous le tenz<sup>3</sup> com fraunche almoygne ou ley fee nous ne poms avoir conyssauntz; <sup>4</sup> mès de nostre estat poms conustre. Par quai etc.

*Berr. ad idem.* Poeit il dire en soun bref *utrum* etc. unde *predictus Walterus est persona (quasi diceret non)?* (Et agarda le bref bone.)

## 12. ANON.<sup>5</sup>

Entré sur disseisine demaundé par une enfaunt deynz age; et fut respondu, pur ceo q'il conta de sa seisine demene.

Un A. porta breve d'entré fundue sour la novel disseisine, que fut deinz age, et counta de sa seisine demene.

*Thoud.* C'est un breve d'entré, que lie en le droit, a quey enfaunt deinz age ne poit estre partie. Jugement, si *infra etatem* responderi debeat.

*Mal.* Coment q'il lie en le droit, il demaunde de sa seisine demene, et l'issue serra en la possession; par quey soun nounage ne li deit deleyer. Set *secus* est s'il eust demaundé de la seisine son auncestre.

Et puis le tenaunt demaunda la vewe. Et habuit etc.

## 13. HOWARD v. LECHE.<sup>6</sup>

*Cui in vita pro muliere*, ou l'entré et lew fut traversé.

Alice que fut la femme William Houwarde porta le *cui in vita* vers Edmond de la Leche, et demanda ij. mees, c. et xl. acres de terre en W., en les queux il n'ad entré, si non par W. Houwarde, baron mesme cest,<sup>7</sup> a qi etc.

*Ingham.* La ou vous demaundez deux mees, c. et xl. acres de

<sup>1</sup> almoygne *S.*    <sup>2</sup> tenaunce *T.*    <sup>3</sup> tenez *T.*    <sup>4</sup> conissaunce *T.*    <sup>5</sup> Text from *S*: compared with *T.*    <sup>6</sup> Text from *S* (Hil.): compared with *T* (Hil.).  
<sup>7</sup> ceste *T.*



whether certain tenements were the free alms of his church of St. Gregory or the lay fee of Walter.

*Hartlepool.* These tenements are the free alms of the church of St. Peter, and he might have his writ asking whether they be the free alms of the church of St. Gregory or the free alms of the church of St. Peter. Judgment of the writ.

*Cambridge.* As to your tenancy, we cannot know how you hold, whether in free alms or in lay fee; but of our own estate we can have knowledge. Therefore etc.

BEREFORD, C.J., to the same effect. Could he say in the supposed writ 'and whereof the said Walter is parson?' Not so.<sup>1</sup> (And the writ was upheld.)

## 12. ANON.

In a writ of entry sur disseisin the parol does not demur for the demandant's nonage if he counts on his own seisin.

One A., who was under age, brought a writ of entry founded on the novel disseisin and counted on his own seisin.

*Toudeby.* This is a writ of entry, which lies in 'the right,' and to it an infant under age cannot be party. Judgment, whether he should be answered while under age.

*Malberthorpe.* Although it lies in 'the right,' he demands on his own seisin, and the issue will be upon the possession; so his nonage ought not to delay him. Otherwise would it have been if he had demanded on his ancestor's seisin.<sup>2</sup>

Afterwards the tenant demanded a view and had it.

## 13. HOWARD *v.* LECHE.

In a writ of entry the tenant can plead that of the tenements demanded he holds only a part, and that into them he had another entry.

Alice, wife that was of William Howard, brought the *cui in vita* against Edmund de la Leche, and demanded two messuages and a hundred and forty acres of land in X., into which he had no entry save by her husband, W. Howard, whom [she could not gainsay etc.]

*Ingham.* Whereas you demand two messuages and a hundred

<sup>1</sup> The tenant, we take it, has not offered a good writ.

<sup>2</sup> This last sentence may be a note.

terre en W., nous vous dioms que les tenemenz ne sunt par tantum <sup>1</sup> en W., einz sunt en iiij. villes etc. Jugement du breve.

*Hedon.* Tenaunt de nostre demaunde : prest etc.

*Ing.* ut prius.

*Berr.* Si W. Howarde purchace certeyn tenemenz en non de <sup>2</sup> manoir de W., et s'il atret <sup>3</sup> a ly quanque est apendaunt, il puit bien fere, coment que les appendaunces seynt en iiij. villes. Mès ore portez <sup>4</sup> vous vostre breve par nombre <sup>5</sup> des acres, ou la demaunde ne se estent plus avaunt forque a la ville ou vous portez le <sup>6</sup> breve.

*Hedon.* Les tenemenz sunt en W. sicom nostre breve suppose : prest etc.

*Ing.* ut prius.

*Berr.* Il vous dit que vous estes tenaunt de sa demaunde. Par quai si vous ne seyet pleinement tenaunt de sa demaunde, r[esponez] a vostre tenaunce.

*Ing.* Nous ne tenoms <sup>7</sup> de sa demaunde en W. forque taunt : prest etc. ; et en cela <sup>8</sup> entrames par A. et nynt par W. : prest etc.

*Hedon.* Tenant de nostre demande en W., et entra par W. ; prest etc.

Et alii econtra.

#### Note from the Record.

De Banco Rolls, Hil., 3 Edw. II. (No. 180), r. 116, Norf.

Alice, wife that was of William Howard, by her attorney, demands against Edmund de Leche and Martin of Thorpe a messuage, one hundred and fifty acres of land and six acres of meadow in Bicchamwelle,<sup>9</sup> as her right by the gift of Nicholas of Cressingham, who enfeofed her thereof, and into which Edmund and Martin have no entry save by William, sometime her husband, who demised to them, and whom in his lifetime she could not contradict.

Edmund and Martin come by their attorney, and, after formal defence,

#### 14A. BARKER v. DUDEKYN.<sup>10</sup>

Prise dez avers entre sokemans remandez sanz estre amercié. Ou le plee fut remué par *pone* en l'auncien demeine.

Un A., qe fust del auncien demene le Roy, fist remuer la parole qe fust en counté vers un home de mesme le soke. Et fust la cause 'quia talis distrinxit in feodo suo pro servicio.'

<sup>1</sup> *tm* (with *tittle*) *S*, *T*. <sup>2</sup> *del T*. <sup>3</sup> *atreit T*. <sup>4</sup> *porte S*. <sup>5</sup> *noun T*.  
<sup>6</sup> *vostre T*. <sup>7</sup> *Ins*, *pas T*. <sup>8</sup> *ceo la T*. <sup>9</sup> *Mod. Beechamwell*. <sup>10</sup> *Text of this first version from L (Pasch).* Headnotes from *L* and *Y*.

and forty acres of land in X., we tell you that the tenants are not only in X., but are in four villis etc. Judgment of the writ.

*Hedon.* Tenant of our demand : ready etc.

*Ingham* repeated what he had said.

BEREFORD, C.J. If W. Howard purchased certain tenements by the name of 'the manor of X.,' then he might draw into it all the appendant lands, though they lay in four different villis. But here you bring your writ [not for a manor, but] for a certain number of acres, and your demand cannot extend beyond the vill named in your writ.

*Hedon.* The tenements are in X. as our writ supposes : ready etc.

*Ingham* repeated what he had said.

BEREFORD, C.J. He tells you that you are tenant of his demand. Therefore if you are not full tenant thereof, answer for your tenancy.

*Ingham.* We hold of his demand in X. only so much : ready etc. ; and into that we entered by A. and not by W. : ready etc.

*Hedon.* Tenant of our demand in X., and you entered by W. ; ready etc.

Issue joined.

#### Note from the Record (*continued*).

say that of the said tenements they hold only a messuage and twenty-four acres of land, and that into these they have not entry by William, for they say that Alice while she was sole demised to them ; and this they are ready to aver, and thereof they demand judgment:

Alice says that Edmund and Martin hold all the said tenements and so held on the day of writ purchased, to wit on 6 Oct. A. R. 2, by the demise of William Howard sometime her husband, whom in his lifetime she could not contradict, and she prays that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded for the quindene of St. John Baptist.

#### 14A. BARKER *v.* DUDEKYN.

A replevin removed from the county court under Stat. Westm. II. c. 2 is sent to a court of the ancient demesne, as both parties are sokemen.

One A., who was of the King's ancient demesne, procured the removal [hither] of an action which was in the county court against a man of the same soke. And the cause [of removal mentioned in the writ] was that [the defendant] 'had distrained in his fee for service.'<sup>1</sup>

<sup>1</sup> Stat. Westm. II. c. 2 required the insertion of such words.

*Ingh.* L'un et l'autre sunt sokemans qe ne deyvent cenz pleder a la comune ley. Par quei si vous veez qe nous devoms si eynz pleder, nous counterom vers eux.

*Scrop.* Nous sumes venuz cieynz par la grant destresce et a sa sute.

*Ingh.* La parole fust remué a vostre seute.

*Scrop.* Statut veot<sup>1</sup> qe la ou home avowe pur services, qe home put remuer la parole, et autrement serroyt il amercié par le desclamer le tenant sanz penaunce. Mès qe nous destreynoms autrefoitz, il fra la deliveraunce, et jamès n'avendroms a vos<sup>2</sup> services.<sup>3</sup>

Et survient<sup>4</sup> le baillif la Countesse de Cornewaylle et dit qe l'un et l'autre sunt de les aunciens demenes le Roy, et ceo chet en desheritage le Roy. Et pria la court sa dame. Et habuit.

*Ber.* Vous plederetz en vostre court, et la put il desclamer solom le usage du manoir.

Par quei fust agardé q'il alassent quites sanz estre amercié etc.

#### 14B. BARKER v. DUDEKYN.<sup>5</sup>

Nota qe la ou le plevissement fut fete en l'auncien demeine le Roi, e le defendant fist la parole venir en banke par la clause del statut 'quia distrinxit in feodo suo.'

*Hengham.* Cest plevissement si est fet en le auncien demene le Roi, e si vous agardez qe nous devoms conter a la comune lei, ceo qe est le auncien demeine le Roi, nous controms volontiers.

Et sur ceo vient le baillif la Contesse de Cornewaille e dit qe ceo fut l'aunciene demeine le Roi qe sa dame tient en noun de dower del heritage le Roi, e pria la court sa dame.

*W. Denham.* Si nous avom avowé sur lui com sur nostre verrei tenant, il desclamera a tenir de nous, par queu desclamer nous ne prendroms avantage.

*Ber.* Vous dites talent; s'il etc. vous poez averer vostre bref secundum consuetudinem manerii. Par quoi agardoms qe la Contesse reeist sa court, e vous pleintif e defendant alez a la court la dame etc., e si vous ne eez droit la, retornez autrefethe sa.

<sup>1</sup> veo *L.*    <sup>2</sup> *Corr.* nos.    <sup>3</sup> In *L* this last sentence follows 'habuit' at the end of the next paragraph.    <sup>4</sup> survient (?) *L.*    <sup>5</sup> Text of this second version from *Y* (f. 169d).



*Ingham.* Both parties are sokemen, who ought not to plead here at the common law. But if you hold that we ought to plead here, we will count against them.

*Scrope.* We have been brought here by the grand distress and at your suit.

*Ingham.* But the action was removed at your suit.

*Scrope.* Statute says that where a man avows for services, the action can be removed [at his suit,] for otherwise he might be amerced, the tenant being able to disclaim [in the county court] without any penalty. And if we distrained another time, he would obtain a deliverance and we should never get to our services.<sup>1</sup>

The bailiff of the Countess of Cornwall intervened and said that both parties were of the King's ancient demesne, and that [their pleading here] tended to the King's disherison. And he prayed [conusance for] his lady's court. This was granted.

BEREFORD, C.J. You shall plead in your court, and there he can disclaim according to the usage of the manor.

So it was awarded that they should go quit without being amerced.

#### 14B. BARKER v. DUDEKYN.

Note that a replevin was made in the King's ancient demesne, and the defendant caused the suit to come into the Bench by the clause 'for that he distrained in his fee.'

*Ingham.* This replevin is made in the King's ancient demesne, and if you award that we must plead at common law of what is the King's ancient demesne, we will plead willingly.

And upon this came the bailiff of the Countess of Cornwall and said that this was the King's ancient demesne, which his [the bailiff's] lady held of the King's inheritance. And he prayed [cognisance for] his lady's court.

*W. Denom.* If we have avowed upon him as upon our very tenant, he will disclaim holding of us, and by that disclaimer we shall take no advantage.

BEREFORD, C.J. You talk at random. If he [disclaims] you can aver your writ against him 'according to the custom of the manor.' Therefore we award that the Countess re-have her court, and you, plaintiff and defendant, go to the lady's court etc., and if you do not get justice there, then come back here.

<sup>1</sup> As noted on the opposite page, we are compelled to make some rearrangement of the text offered by our only manuscript.

## Note from the Record.

De Banco Rolls, Easter, 3 Edw. II. (No. 181), r. 45, Linc.

William Dudekyn was summoned to answer John le Barkere of Warton of a plea why he took a certain cow of John's and wrongfully detained her against gage and pledges etc. And thereupon John, by Geoffrey of Askeby his attorney, says that on [Jan. 22, 1308] Monday next before the Conversion of St. Paul in 1 Edw. [II.] in the vill of Warton<sup>1</sup> in the soke of Kyrketon which is of the ancient demesne of the King,<sup>1</sup> in John's house, William took a certain cow of his and wrongfully detained her against gage and pledges etc. until etc.; and he says that thereby he is deteriorated and has damage to the value of forty shillings; and thereof he produces suit etc.

The same William was summoned to answer William son of Simon of Warton of a plea why he took a certain horse of his and wrongfully detained it against gage and pledges etc. And thereupon William son of Simon, by the said Geoffrey his attorney, says that on the day and year aforesaid, in the vill of Warton, in the house of William son of Simon, William Dudekyn took the said horse and wrongfully detained it against gage and pledges etc. until etc.; and he says that thereby he is deteriorated and has damage to the value of forty shillings; and thereof he produces suit etc.

(Note continued on opposite page.)

15. ANON.<sup>2</sup>

*Replegiari* ou le tenant granta lez services le tenant en demene a chief seynur paramount.

Un tenaunt enfeffa un autre de certeyn tenementz de tenir de ly avant statut par lez services de vj. deners, la ou il tent mesmes ceux tenementz de chief seynur par lez services de xij. deners; et graunta lez services le tenaunt en demene a cely chief seynur; et le tenaunt attorna de les vj. d. Le seignur destreynt pur lez xij. deners, et se fist avowerie sur le tenaunt qe fust meen.

*Hedon.* Nous sumes tenantz, et vous seisi de noz services. Jugement, si pur mesmes lez services sur autre que sur nous pussez avowerie fere.

*Willeb.* Ceo serreyt a ouster nous de nostre veray tenaunt, par qei mayn nous avoms esté seisi.

*Hedon.* Nous vous diom qe T., sur qi vous avez avowé, nous enfeffa de mesmes lez tenementz a tenir de ly avant statut par les services de vj. deners. T. granta nos services a Richard, par quel graunt nous attornames a ly. Jugement, si sur autre que sur nous pusse avower.

<sup>1-1</sup> Interlined. Wharton is in Blyton, not far from Kirton-in-Lindsey. <sup>2</sup> Text from L (Pasch.).

**Note from the Record** (*continued*).

[William Dudekyn is similarly sued by Walter Hamund for taking a mare, and by Simon son of Peter for taking a mare.]

And William Dudekyn comes. And hereupon comes Adam of Brom, bailiff of Margaret, wife that was of Edmund sometime Earl of Cornwall, and says that she holds the manor of Kyrketon which is of the ancient demesne etc. in dower by the gift of Edmund, sometime her husband, and by the assignment of the King, and that the reversion of the manor after her death belongs to the King and his heirs, and that within this manor no writ runs save the little writ of right close; and he prays that these suits (*loquelae*) may not proceed in the court here in prejudice of his lady and of the King.

And inquiry is made both of John and the other plaintiffs, as also of William Dudekyn, at whose suit (*sectam*) the said suits (*loquelae*) are prosecuted in the court here, whether the vill of Warton is in the manor of Kyrketon, and whether that manor is of the ancient demesne of the crown etc. They say that so it is.

Therefore it is said to John and the other plaintiffs that they go to the court of the said manor and do there prosecute their said complaints etc.

15. LUCTELEYE *v.* BAGOT.<sup>1</sup>

Lord, mesne and tenant; mesne grants tenant's services to lord; tenant attorns. Can lord avow upon mesne? Not if he took tenant's fealty.

Before the Statute [*Quia emptores*] a tenant enfeoffed another to hold of him by the service of six pence, whereas he himself held the same tenements of his chief lord by the service of twelve pence. Then he granted to that chief lord the services of the tenant in demesne, and that tenant attorned for the six pence. The lord distrained for the twelve pence, and made his avowry upon the mesne.

*Hedon.* We are tenants and you are seised of our services. Judgment, whether for the same services you can avow upon another.

*Willoughby.* That goes to oust us from our very tenant, by whose hand we have been seised.

*Hedon.* We tell you that before the Statute one T., upon whom you have avowed, enfeoffed us of the same tenements to hold of him by the service of six pence. Then he granted our services to [you], and upon that grant we attorned to [you.] Judgment, whether you can avow upon another.

<sup>1</sup> Proper names from the record.

*Willeby.* Nous avoms avowé sur T. pur nos services de xij. deners, et il dit q'il tent de nous par lez services de vj. deners. Jugement, s'il nous pusse issi estraunger de nostre veray tenaunt.

*Ber.* Il vous covent respoundre par la.

*Willeby.* Nous ne receymes unques nos services par my sa mayn, si noun en autri noun.

*Hedon.* Ceo ne poez dire qe vous estes seisi de nostre feauté. Prest etc.

*Will.* Nient seisi. Prest etc.

#### Note from the Record.

De Banco Rolls, Easter, 3 Edward II. (No. 181), r. 30, Staff.

John Bagot of Bromleye Bagot in mercy for divers defaults.

John Bagot was summoned to answer Maud of Luctelewey of a plea wherefore he took a cow of hers and wrongfully detained her against gage and pledges. And thereupon Maud says that on [Oct. 5, 1306] Wednesday next after Michaelmas in 34 Edward [I.] in the vill of Bromleye Bagot in a certain place called Comberle John took the said cow and wrongfully detained her against gage and pledges etc. until etc.; whereby she says that she is deteriorated and has damage to the value of sixty shillings; and thereof she produces suit etc.

And John Bagot, by William of Bentleye his attorney, comes and defends the force and tort when etc.; and he avows the taking good and lawful; for he says that one Roger, son of Richard of Abburleye, holds of him three acres of land with the appurtenances in the said vill, whereof the *locus in quo* etc. is parcel, by homage, fealty, and the service of twelve pence a year and by doing suit to John's court of Bromleye Bagot from three weeks to three weeks; and that of this homage, fealty, and service William Bagot, father of John, whose heir he is, was seised by the hand of

#### 16A. SWABY *v.* FARFORD.<sup>1</sup>

*Quid iuris clamat*, ou chartre fut fet al tenant a terme de vie. *Questio* si il seyt voyde etc.

Un *quid iuris clamat* fut porté vers une feme, qe vint en court et dit qe les<sup>2</sup> tenementz furent lessez a ly et a son baron a terme de lour deus vies; issi cleyne<sup>3</sup> ele estat a terme de vie.

*Malm.* Ele conust q'il<sup>4</sup> tent a terme de sa vie auxi com la conisaunce le voet. Et priom qe ele s'atourne.

<sup>1</sup> Text of this first version from *L* (Pasch.).    <sup>2</sup> le *L*.    <sup>3</sup> cley *L*.    <sup>4</sup> *Corr.* q'ele.



*Willoughby.* We have avowed upon T. for our service of twelve pence, and the plaintiff says that he holds of us by the service of six pence. Judgment, whether you can thus estrange us from our very tenant.

BEREFORD, C.J. You [for the avowant] must answer his point.

*Willoughby.* We never received our services from him except as from one who acted for another.<sup>1</sup>

*Hedon.* That you cannot say, for you are seised of our fealty. Ready etc.

*Willoughby.* Not seised. Ready etc.

**Note from the Record** (*continued*).

Richard of Abburleye, father of Roger, whose heir he is, and who died in William's homage; and because Roger's homage was arrear on the day of the taking, he took the cow in the said place, as well he might etc.<sup>2</sup>

And Maud says that John cannot avow the distress lawful in this behalf; for she says that one Richard, son of Thomas of Haytele, at one time was seised of the tenements, in which etc.; and of the said tenements he enfeoffed Maud, to hold of him, Richard of Haytele, by fealty and the service of sixpence a year for all service, long before the statute of the King etc.; and Richard afterwards assigned Maud's services to John Bagot; by pretext of which assignment, Maud attorned herself to John for the said service for the said tenement and did him fealty, and he accepted her as his tenant of the same tenements; and therefore she prays judgment etc.

And John says that he never admitted Maud his tenant of the tenements for the said service of sixpence nor took her fealty, as she asserts; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the octave of Michaelmas.

**16A. SWABY v. FARFORD.**<sup>3</sup>

Words of gift in a charter may be construed as a release.

A *quid iuris clamat* was brought against a woman. She came into court and said that the tenements were leased to her and her husband for the term of their two lives, and so she claims an estate for life.

*Malberthorpe.* She confesses that she holds for her life as the conusance states. We pray that she may attorn.

<sup>1</sup> That is, who was acting as attorney or agent of the mesne.

<sup>2</sup> The word *cras* is here written in the margin of the roll.\*

<sup>3</sup> Proper names from the record.

*Willeby.* Les tenementz furent en la seisine un R. de P., pere mesme cesti qe conust. Le quel Richard dona ceux tenementz al home et a sa feme a terme de lour deux vies. Pus mesme cesti R. voleyt enlargir l'estat le baron et lour fist une chartre qe voleyt 'dedi, concessi,' ove clause de garrauntie a ly et a ses heirs. Et veyetz cy son heir, et prie qe la feme ne s'attourne a sa desheritaunce. (Et mist avant le fet le pere.)

*Malm.* La femme ad conu qe ele tent a terme de vie, et priom qe ele s'attourne.

*Ber.* Ou est cely que conust? Illy covent graunter si ceo seyt le fet son auncestre ou ne mie.

*Malm.* A ceste fet navoms mester a respondre, qar il est voyde, de pus q'il ne fut mie seisi du franktenement, et issi ne poit il doner ceo q'il n'avoit mye.

*Ber.* Respondez primes si ceo seit vostre fet, et puis est a nous a veer si y puisse estat prendre par mye cel fet.

*Malm.* Nous conissom ben le fet; mès nous diom *ut supra*.

#### 16B. SWABY v. FARFORD.<sup>1</sup>

Aleyn de Coningish[olm] suyt le *quid iuris clamat* vers Juliane qe fu femme Richard de Fairfort, a conustre ceo qe ele clama en un mies e une carué de terre, le quel ele tient a terme de vie par la r[eson] qe Alein de Swaby lessa ceux tenemenz a lui e Richard de Fairfort jadis sun baron a terme de lour deus vies.

*Hervi.* T. le fiz A. conust ceux tenemenz estre le droit A. de Coningishole. Savez rien dire pur quoi etc.?

*Herle.* Vous avez ici Joan le fiz Richard qe vous dit qe ele ne deit attorner par la reson qe A. de Swaby lessa ceux tenemenz a Richard son pere e ceste Juliane a terme etc., le quel A. enfeffa le dedit<sup>2</sup> Richard e ses heirs e obligea lui e ses heirs a la garrantie. E demandoms jugement si la dite Juliane en desheritance de lui deive attorner. (E mist avant chartre a la court qe dit 'dedi, concessi et confirmavi et ego et heredes mei warantizabimus.')

*Malm.* Par ceo de ceste attornement nous ne pount il ouster, qe il

<sup>1</sup> Text of this second version from Y (f. 201). The record also is there given.

<sup>2</sup> *Corr.* dit (?).

*Willoughby.* The tenements were in the seisin of R. of P., father of the conusor. He gave them to the husband and wife for term of their two lives. Then he desired to enlarge the estate of the husband and made him a charter which contained words of gift and grant, with a clause of warranty, to him and his heirs. See here his heir, who prays that the woman may not attorn herself to his disherison. (He produced the deed of [the conusor's] father.)

*Malberthorpe.* The woman has confessed that she holds for life, and we pray that she may attorn herself.

BEREFORD, C.J. Where is the conusor? It behoves him to confess whether this be the deed of his ancestor or not.

*Malberthorpe.* To that deed we need not answer, for it is void, since he was not seised of the freehold and so he could not give what he had not got.

BEREFORD, C.J. Answer first whether this is [your ancestor's] deed, and then it will be for us to say whether [the intervener] can take an estate by that deed.

*Malberthorpe.* We confess the deed, but repeat what we have said.

#### 16B. SWABY *v.* FARFORD.<sup>1</sup>

Alan of Coningesholm sued the *quid iuris clamat* against Juliana, wife that was of Richard de Farford, to confess what she claimed in a messuage and a carucate of land, which she holds for life since Alan de Swaby leased these tenements to her and Richard de Farford, sometime her husband, for the term of their two lives.

STANTON, J. T. the son of A. has made conusance that these tenements are the right of A. de Coningisholm. Can you say anything [to show that you should not attorn]?

*Herle.* Here you have John the son of Richard, who tells you that she ought not to attorn; for A. de Swaby leased these tenements to Richard [the intervener's] father and this Juliana for the term [of their two lives], and [then] the said A. enfeoffed Richard and his heirs and bound himself and his heirs to warranty. And we pray judgment whether Juliana ought to attorn to the disherison of [John]. (And he produced to the Court a charter which said 'I gave, granted and confirmed, and I and my heirs will warrant'.)

*Malberthorpe.* They cannot by this oust us from our [right

<sup>1</sup> For the real names see our note from the record. The report does not give them quite correctly.

ont conu le lees fet a Juliane a term de lour deus vies, par queu lees Juliane est hui ceo jour seisi, e issi continuant l'estat nostre conissour tanke a jour de la conissance fete sanz interrupcion. E demandoms jugement si attorner ne deit.

*Beref.* Quoi r[esponez] a la chartre A. de Swaby qe voet 'concessi, confirmavi,' e estre ceo gar[rantie]?

*Malm.* Nous demurroms en voz jugemenz.

*Hervy.* Si agarde la court qe Juliane va a dieu sanz jour e A. de Coninshole en une bone mercy, pur ceo q'il ad travaillé Juliane atort etc.

#### Note from the Record.

De Banco Rolls, Easter, 3 Edward II. (No. 181), r. 89d, Lincoln.

The sheriff was commanded to cause to come here at this day Juliana, wife that was of Richard of Farford, to confess what right she claims in fifteen acres of meadow with the appurtenances in Somercote<sup>1</sup> which Thomas of Conyngesholme granted in court here by a fine to Simon of Swaby.

And now come as well Simon by his attorney as Thomas and Juliana. And Juliana, being asked what right she claims in the said meadow, says that she holds the tenements only for term of her life by the demise of Alan, son of Thomas of Conyngesholme, father of the said Thomas, whose heir he is, who demised these tenements to Richard of Farford, sometime Juliana's husband, and Juliana, to hold for the term of the life of both (*vite utriusque*) Richard and Juliana; and Juliana outlived etc. and holds the meadow for term of her life in form aforesaid.

And upon this comes one Richard, son and heir of Richard sometime husband etc., and says that Juliana ought not to attorn herself to Simon on the said grant; for he says that after the tenements came into the seisin of Richard and Juliana to hold for the term of the life of both in form aforesaid, Alan father of Thomas, whose heir he [Thomas] is, granted and by his charter confirmed to Richard, sometime husband etc., father of [the intervener], whose heir he is, the said fifteen acres of meadow with the appurtenances to hold to him and his heirs for ever and bound himself and his heirs to warrant etc. And he proffers a charter of Alan, which witnesses that Alan granted, gave, and confirmed to Richard, father etc., the said meadow etc. And he prays that by the grant of Thomas who has no right etc. no prejudice may be done to him, especially as it sufficiently appears by the said charter that the whole right and fee of the said meadow by the gift and grant of Alan, father etc., wholly remained in the person of Richard, father of [the intervener] and his heirs.

And Thomas confesses the charter to be the deed of his father, whose heir he is; but he says that the charter should not profit [the intervener]; for he says that at the time of the making of the charter Richard and

<sup>1</sup> Mod. Somercotes.



to] an attornment for they have confessed the lease made to Juliana [and Richard] for the term of their two lives ; and by that lease Juliana is this day seised, and so she continues the estate of our conusor down to the day of the conusance without interruption. We pray judgment whether she ought not to attorn.

BEREFORD, C.J. What do you answer to the charter of A. de Swaby which says 'granted and confirmed,' and, besides that, [contains a] warranty?

*Malberthorpe.* We will abide your judgment.

STANTON, J. The Court awards that Juliana take farewell without day, and that A. de Conyngesholm be well amerced for having troubled Juliana wrongfully.

**Note from the Record** (*continued*).

Juliana his wife were seised of the meadow by the prior grant of Alan, father etc., to hold for the term of their lives, as [the intervener] above confesses ; and Juliana has until now continued her estate, to wit, for term of life, without this (*absque hoc*) that after the first grant by Alan the meadow ever reverted into Alan's seisin, in such wise that he could give the same out of his seisin to Richard, father etc. or another, or enfeof him thereof. And he prays that Juliana may attorn herself etc.

A day is given them in the quindene of St. Michael to hear their judgment in the same state as now.

At that day came Simon and likewise [the intervener]. And Juliana came not. Therefore the sheriff is commanded to distrain her by all her lands etc., and of the issues etc., and to have her body here in the quindene of St. Hilary.

Afterwards, the process having been continued until three weeks from Easter in 4 Edw. [II.], Thomas of Conyngesholme and Simon come by their attorneys and also Richard [the intervener] comes and Juliana by the grand distress. Therefore be she in mercy for divers defaults. And Richard [the intervener] says as he said before, and prays that Juliana do not attorn in this case to his disherison. And Simon and Thomas say as they said before etc. and this they offer to aver. And because Thomas expressly confessed the charter to be the deed of his father Alan, and by it Alan gave, granted, and confirmed the meadow with the appurtenances to Richard, father of [the intervener], to hold to him and his heirs, and bound him and his heirs to warrant to Richard, father etc., and his heirs, it seems to the Court that by any grant of Thomas, son and heir of Alan, made to Simon of the meadow, the right and fee whereof was vested in the person of Richard, father etc. by the said deed of Alan, father etc., nothing could in this case accrue to Simon contrary to that deed ; and therefore it is awarded that Juliana go thence without day, and that Simon take nothing by the grant, but be in mercy.

17. ANON.<sup>1</sup>

Dette : executours demandantz : ou le defendant est a sa ley encontre lour seute.

Les executours un C. porterent lour bref de dette.

*Hedon.* Qe nul dener ne ly devoms. Prest etc.

*Lauf.* A la ley ne devez avenir, pur ceo qe nous sumes executours. Et d'autrepart ceo est de grose chose dount pays pust avoir conisaunce.

*Ber.* Si vous ly surmettez q'il fut tenu al testatour en c. livres, et vous n'avez que seute a ly lyer a la dette, il serroyt a sa ley. Pur quai donqe ne se pust alier de ceo qe est meyns, scil. de vj. sakes de leyne ?

*Hedon.* Nous avoms tendu la ley et yl la refusent. Jugement.

*Stant.* Volez la ley ?

*Lauf.* Si vous agardez q'il pussent a la ley avenir encountre executours, nous la reseceyverom volunters.

*Staunt.* Moustrez coment et pur quai il serroit de pire condicion vers les executours que vers le testatour, qar vers <sup>2</sup> le testatur il poreyt estre a sa ley.

Et fut la ley receu.

18. WALDINGFELD v. LEE.<sup>3</sup>

Forfeiture de mariage receu du lees.

Un porta son bref de forfeiture de mariage et dit qe la ou l'auncestre mesme cely tynt de un B. par service de chivalerie etc., le quel ly lessa la garde et le mariage etc., par quei il tendi mariage avenaunt sanz desparage,<sup>4</sup> il refusa et se maria a ailleurs, par quai il dut receyvre lez terres l'enfaunt outre son pleyn age par tant de temps q'il ust receu le double value de mariage, cesti après son pleyn age s'abati en lez tenementz.

<sup>1</sup> Text from *L* (Pasch.).  
sign of abbreviation.

<sup>2</sup> *Om.* vers *L*.

<sup>3</sup> Text from *L* (Pasch.).

<sup>4</sup> No

17. ANON.<sup>1</sup>

In an action by executors for debt without specialty, law may be waged.

The executors of one C. brought their writ of debt.

*Hedon.* No penny do we owe him. Ready [to make our law].

*Lauffer.* To the law you cannot get; for we are executors. Besides, this is a big affair of which the country may have knowledge.

BEREFORD, C.J. If you surmised that he was bound to the testator in a hundred pounds, and only had suit whereby to bind him to the debt, he would be at his law. Why then should he not 'at-law' <sup>2</sup> himself for that which is less, namely for six sacks of wool?

*Hedon.* We have tendered the law and they refuse it. Judgment.

STANTON, J. Will you receive the law?

*Lauffer.* Yes, we will, if you award that they can get to the law against executors.

STANTON, J. Show us how and why he should be in a worse position against executors than that in which he would be against the testator, for against the testator he could be at his law.

The law was received.

18. WALDINGFELD v. LEE.<sup>3</sup>

*Semble* that a lord cannot bring an action for forfeiture of marriage if he put the heir in seisin on attaining full age.

A man brought his writ of forfeiture of marriage, and said that the ancestor of [the defendant] held of one B. by knight's service etc.; and that B. leased to [the plaintiff] the wardship and marriage etc.; and that he tendered a suitable marriage without disparagement; and that [the defendant] refused it and married himself elsewhere; and that therefore [the plaintiff] ought to hold the lands of the infant for such a time beyond his full age that the double value of the marriage would be received; and that [the defendant] after his full age abated himself into the tenements.<sup>4</sup>

<sup>1</sup> It is possible that this is another report of a case given in vol. ii., p. 15. If so, some reporter has gone far astray. See vol. iii. p. lxxxvii.

*alayer, alier*, we seem to see a verb made by English lawyers.

<sup>3</sup> Proper names from the record.

<sup>4</sup> Stat. Mert. c. 6.

<sup>2</sup> In various forms such as *alaer*,

*Hedon.* La ou vous dites q'il s'abati en lez tenementz<sup>1</sup> encountre vostre volunté, q'il entra par vostre liveré et gree: prest etc.

*Ingh.* Il vous covent dire plus qe nous avoms receu la value ou que vous avez fet gree pur le mariage.

*Hedon.* Nous vous diom qe vous nous liverastes nostres terres après ceo que nous venimes a nostre pleyn age, et issi etc.

Et alii econtra etc.

#### Note from the Record.

De Banco Rolls, Easter, 3 Edward II. (No. 181), r. 100, Essex,

Robert, son of William de la Lee of Reyndon, was summoned to answer Adam of Waldingfeld of a plea wherefore (whereas the wardship of Robert and his land belonged to Adam until the lawful age of Robert, together with Robert's marriage, by reason of the demise which Robert son of Walter, of whom Robert de la Lee, grandfather of Robert son of William, whose heir he is, held his land by military service, made thereof to Adam, and Adam, having long been in full and peaceful seisin of the wardship, had often offered to Robert son of William a reasonable marriage without disparagement), Robert son of William, refusing that marriage, violently intruded himself into his said land, no satisfaction having been made to Adam for the marriage. And thereupon Adam, by William of Bostede his attorney, says that (whereas the wardship of Robert son of William and of one messuage and forty-five acres of land, six acres of meadow and four acres of pasture with the appurtenances in Reyndon<sup>2</sup> of Robert son of William belonged to Adam until the lawful age of Robert, together with Robert's marriage, by reason of the demise which Robert son of Walter, of whom Robert grandfather etc. held the tenements by military service, made

#### 19. ANON.<sup>3</sup>

Entré en dowere, et bref chalengé et agardé bon.

Un A. porta son bref d'entré, en les queux le tenaunt n'ad entré, si noun par A. de B. que ceux tenementz tenent<sup>4</sup> en dowere.

*Lauf.* La forme du bref serroyt 'et les queux après la mort la feme a le demandaunt deyvent revertir'; et le bref ne fet pas mencion de la revercioun. Jugement du bref.

*Hedon.* Nostre bref voet que nous sumes heir nostre pere que dowa etc. Par quei etc. Et si nous feyssom heir en la revercioun, ceo serroyt nugacioun.

<sup>1</sup> *Ins.* entra *L.*

<sup>2</sup> *Mod.* Roydon.

<sup>3</sup> Text from *L* (Pasch.).

<sup>4</sup> So in full *L.*



*Hedon.* Whereas you say that he abated himself into the tenements against your will, he entered by your will and your livery. Ready, etc.

*Ingham.* You must say in addition that we have received the value or that you have made agreement with us for the marriage.

*Hedon.* We tell you that you delivered our lands to us after we had come to our full age, and therefore, etc.

Issue joined.

**Note from the Record** (*continued*).

thereof to Adam, and Adam, having long been in full and peaceful seisin of the wardship, on [Jan. 29, 1299] Thursday next before the Purification in 27 Edw. [I.], and also on [May 8, 1301] Monday next after the Invention of Holy Cross in 29 Edw. [I.] at Great Hallingbiry, in the presence of Robert Chaplain, Thomas of Sherringb' and others, offered Robert son of William a reasonable marriage without disparagement, to wit, of Joan daughter of Richard le Chaumberleyn, Robert son of William, refusing that marriage, violently intruded himself into his said tenements, no satisfaction having been made to Adam for that marriage; and he says that thereby he is deteriorated and has damage to the value of sixty pounds; and thereof he produces suit.

And Robert son of William comes and defends tort and force, when etc.; and he says that on the said day and year he did not violently intrude himself into the tenements; for he says that in truth, when he came to his full age, Adam of his free will (*gratis*) rendered the tenements to him; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the octave of St. Michael.

19. ANON.

Form of the writ of entry *ad communem legem*.

One A. brought his writ of entry saying 'into which the tenant had no entry save by A. of B., who held these tenements in dower.'

*Laufer.* The form of the writ should be 'and which after the death of the [doweress] ought to revert to the demandant'; and this writ makes no mention of the reversion. Judgment of the writ.

*Hedon.* Our writ says that we are heir of our father, who endowed etc. Therefore etc. And if we made mention of the reversion,<sup>1</sup> that would be nugatory.

<sup>1</sup> The text has 'if we made heir in the reversion.'

*Scrop.* Lees la feme ne doune mye actioun, mès la mort la feme issi qe après la mort la feme a vous dussent revertir, de qi vous fetes omission. Jugement du bref, qar en vostre bref d'entré *ad terminum qui preteriit* si averez vous 'et que post terminum predictum reverti debent.'

Et pus le bref agardé bon predictis non obstantibus etc.

## 20. ANON.<sup>1</sup>

Prier estre receu par defaute après defaute.

Une feme pria estre receu a defendre son droit pur defaute de son baron après defaute.

*Denom.* Moustrez pur quei vous devez estre receu.

*Pass.* Ele est nomé en le bref et issi doyt ele estre receu.

*Denom.* Receu ne devez estre sanz ceo qe vous ne moustrez vostre droit.

*Pass.* Celi qe porte cel bref n'avoit unques ren en lez tenementz si noun com feme etc.

Et alii econtra.

## 21. ANON.<sup>2</sup>

*Cui in vita.*

Une feme porta le *cui in vita* par divers precipes. Les tenauntz fesoyent defaute après defaute. Survint Agnes que fut la feme Laurence de Lodelowe, et pria d'estre receu, que la reversion a ly appendoyt, pur ceo que un William le Seppherd graunta lez services de cez tenementz ensemblement oves eschetez, gardez et totes autres profitz que escheir pount, par quel graunt ceux se attournerent a nous; issi appent a nous<sup>3</sup> la revercioun et prioms etc.

*Scrop.* Receu ne devez estre, que, si vous fussetz, vous abaterez nostre bref. Et cec ne poez, pur ceo que nostre bref est conceu vers lez tenauntz que n'avoyent entré si noun par nostre baron, et qi etc. Et vous clamez par le graunt William la reversion,<sup>4</sup> que n'est mie en lez degreez; que, si vous ly volez vocher, il ne serroyt mye receu,

<sup>1</sup> Text from *L* (Pasch.).    <sup>2</sup> Text from *L* (Pasch.).    <sup>3</sup> vous *L*.    <sup>4</sup> reversio *L*.

*Scrope.* It is not the demise by the doweress but her death that gives the action, [your case being] that on her death the tenements ought to revert to you; and of this you make no mention. Judgment of the writ. In a writ of entry *ad terminum qui preterit* you would have 'and which after the said term ought to revert.'

Notwithstanding these [objections,] the writ was awarded good.

## 20. ANON.

A wife named in the writ is received without showing cause.

On default after default made by her husband, a woman prayed to be received to defend her right.

*Denom.* Show cause why you should be received.

*Passeley.* She is named in the writ and therefore ought to be received.

*Denom.* You ought not to be received without showing your right.

*Passeley.* The demandant never had anything in the tenements except as wife etc.

Issue joined.

## 21. ANON.

Writ of entry within the degrees. Intervention of one who is outside the line. A reversion not proved by a grant of service.

A woman brought the *cui in vita* with divers praecipies. The tenants [A. B. and C.] made default after default. One Agnes, wife that was of Lawrence of Ludlow, intervened and prayed to be received, for that the reversion belonged to her, because one William Shepherd granted the services of these tenements with all the escheats, wardships, and other profits that might fall in, and on this grant [the tenants in the action] attorned to Agnes, so that the reversion belonged to her. And she prayed [to be received.]

*Scrope.* You ought not to be received, for if you were, you would abate our writ. And that you cannot do, for our writ is conceived against the tenants who had no entry except by our husband whom [we could not gainsay.] And you claim the reversion by the grant of William, who is not in the degrees [stated in the writ.] And if you wished to vouch him, he would not be received, for he is out of

pur ceo q'il est hors de la lyne. Et d'autrepart il n'ad ren en l'escrit q'il mettent avant que tesmoigne expressement la revercioun.

*Pass.* Le fet que nous avoms mis avant tesmoigne que W. nous ad graunté totes maners de profitz, et nous seisi de services, et la reversioun est un profit. Par quei etc.

*Ber.* Il n'ad nules paroles que tesmoignent la reversioun, et ceo covendroit avoir.

*Herle.* Nous mettoms avant l'escrit en evidence et volom averer que la reversion a nous apent. Jugement.

*Ber.* Pur ceo que vous mettez etc. et que testmoigne les services A. et B. a vous estre graunté, et ne mostrez ren par quai le demene vous fust graunté, ne coment la reversion a vous<sup>1</sup> appent, si noun par le graunt de services, si agarde etc. que le demandaunt recovere vers A. et B.; et entendroms<sup>2</sup> de C. pur ceo que il y ad variaunce entre le bref de jugement et l'original, qe l'original voet 'Stentone' et le bref de jugement 'Stevenham'; par quay en dreyt de cel nous n'avoms nul garraunt etc.

## 22. THACKSTEDE v. FREEBARN.<sup>3</sup>

Mordauncestre. Excepcion de droit.

Thomas de Spaldinge et Emme sa feme porterent un assise de mordauncestre vers L. de Tramplees etc.

*Pass.* C'est un bref de possession, et doit estre porté de la mort le dreyn seisi. Et vous dioms que après la mort etc. entra un W. frere mesme cesti T. com frere et heir et seisi fust. Jugement du bref.

*Willeb.* L'entré W. et sa seisine nous ne deit ouster de ceste seisine,<sup>4</sup> quar il entra com nostre tolour,<sup>5</sup> dount sa quiteclamaunce ne sa felonie nous ne barr[eit] pas. Jugement.

*Pass.* Donque grauntez vous q'il entra com frere et heir et fust . seisi. Jugement.

*Ber.* Il dit que W. entra après la<sup>6</sup> mort T. com tolour,<sup>7</sup> et la seisine le tolur ne abate pas le bref par excepcion de dreyn seisine. Par quei responez a ceo ou ditez outre.

<sup>1</sup> nous L.

<sup>2</sup> Corr. attendroms (?)

<sup>3</sup> Text from L (Pasch.). For the record of this case see vol. i. p. 48. The reference to the fine there mentioned is Feet of Fines, Case 149, File 41, No. 53.\*

<sup>4</sup> Corr. ceste assise (?).

<sup>5</sup> color L.

<sup>6</sup> sa L.

<sup>7</sup> colour L.



the line.<sup>1</sup> Besides, there is nothing in this writing which expressly witnesses a reversion.<sup>2</sup>

*Passeley.* The deed that we have produced witnesses that William has granted to us 'all manner of profits,' and we are seised of the services, and the reversion is a profit. Wherefore etc.

BEREFORD, C.J. There are no words showing a reversion, and such words you ought to have.

*Herle.* We put in the deed as evidence and will aver that the reversion belongs to us. Judgment.

BEREFORD, C.J. Since you produce this deed which testifies that the services of A. and B. are granted to you, and you show nothing whereby the demesne is granted to you, or whereby [any] reversion belongs to you, except this grant of services, therefore this Court awards that the demandant recover against A. and B. But as to C. [we must wait], for there is a variance between the judicial writ and the original, for the original writ says 'Stenton' and the judicial writ says 'Stevenham,' so as to this man we have no warrant to proceed.

## 22. THACKSTEDE *v.* FREEBARN.

Mortdancestor. Plea of 'last seised.' Whole and half blood.

Thomas of Spalding and Emma his wife brought an assize of mortdancestor against L. of Tramplees [on the death of Emma's uncle Thomas].<sup>3</sup>

*Passeley.* This is a possessory writ and should be brought on the death of the last seised. And we tell you that after the death of [Thomas] his brother [Ralph] entered as brother and heir and was seised. Judgment of the writ.

*Willoughby.* The entry and seisin of [Ralph] ought not to oust us from this assize, for he entered as our tollor, so that his quitclaim or his felony would not bar us. Judgment.

*Passeley.* Then you grant that he entered as brother and heir and was seised.

BEREFORD, C.J. He says that [Ralph] entered on the death of Thomas as a tollor, and the seisin of a tollor will not serve to abate the assize by a plea of last seisin. So answer to that or plead over.

<sup>1</sup> Stat. Westm. I. c. 40.

<sup>2</sup> For all that appears, the tenants whose services are granted may be holding in fee simple.

<sup>3</sup> Owing to the faults of our one manuscript, it would be difficult to spell out the story without the record.\* See note 3 on opposite page.

*Pass.* La ou T. et Emme portent ceste assise de la mort R. le vouch'<sup>1</sup> E., nous vous dioms que ele ne put en les tenementz rien demander, qar ele n'est pas del entier sanke R., de quy mort ceste assise est porté, pur ceo que un Rauf auncestre Emme avoyt ij. femes, dount R., de qi mort etc., est issu de la une feme et R. pere Emme del autre issue<sup>2</sup> sount divers ventres, et William et R. de un ventre, et issi est ele du sank parti. Jugement, si ele pusse dire que W. entra com son tollour.

*Malm.* Il nous voyllent estraunger par reson de divers ventres<sup>3</sup> nous donque mere.

*Pass.* Jeo voil averer moun dit.

*Ber.* Nomez lez merez.

*Pass.* Sire R. l'auncestre prist une feme Isabel et engendra de ly R. pere Emme que ore porte l'assise. Isabel devia. Rauf prist autre feme Maude e engendra de ly T. et W. de qi mort etc., issi que après la mort T. entra W. com frere et heir del enter sank. Jugement, que<sup>4</sup> Emme que est del estraunge ventre pusse etc. cest assise, ou l'entré W. com tollour affermer.

*Kyng.* Taunt amounte que ele n'est pas del enter sank et issi nent plus procheyn heir. Prest de l'averer par assise.

*Pass.* Responetz a ceo que nous vous diom, que vous est estrange al sanke Thomas.

*Berr.* Il est a ouster vous d'accion, quar si vous ne seyez del enter sanke, vous n'avez jamès les tenementz par assise. Estre ceo, vous estes estraunge a eus<sup>5</sup> vous ne poez ren dire a eux estraunger si noun par my la seisine.<sup>6</sup>

*Will.* Il nous voet estraunger par tant que nous ne sumes pas del enter saunk, et ceo ne<sup>7</sup> covent averer<sup>8</sup> et prover, et ceo amounte nent plus forque nous ne sumes pas plus procheyn heir. Prest etc.

Et alii econtra etc.

<sup>1</sup> *Sic L*; *corr.* le ounce (?). <sup>2</sup> *Corr.* issint (?). <sup>3</sup> *Ins.* donetz (?). <sup>4</sup> *Corr.* si (?). <sup>5</sup> *Ins.* et (?). <sup>6</sup> *Corr.* par my lassise (?). <sup>7</sup> *Om.* ne (?). <sup>8</sup> *av'* *L.*

*Passeley.* Whereas Thomas and Emma bring this assize on the death of [Thomas] Emma's [uncle], we tell you that she can demand nothing in the tenements, for she is not of the whole blood of [Thomas], upon whose death the assize is brought; for one Ralph, Emma's ancestor, had two wives, and [Thomas], upon whose death the assize is brought, was issue of one of them, and Emma's father was issue of the other: so there are different venters, and [Ralph] and Thomas came from one of them, so she is of the half-blood. Judgment, whether she can say that [Ralph] entered as her tollor.

*Malberthorpe.* They want to estrange us on the score of divers venters, so [give] us a mother.

*Passeley.* I will aver my assertion.

BEREFORD, C.J. You must name the mothers.

*Passeley.* Sir, Ralph the ancestor took a wife Isabel, and engendered of her [William] the father of Emma the plaintiff. Isabel died. Ralph married a second wife, Maud, and engendered of her Thomas (on whose death this assize is brought) and [Ralph]; and upon Thomas's death, [Ralph] entered as brother and heir of the whole blood. Judgment, whether Emma, who is of a strange venter, can [bring] this assize or affirm that [Ralph's] entry was that of a tollor.

*Kingeshemede.* Tantamount to 'Not of the whole blood and therefore not next heir.' Ready to aver by the assize.

*Passeley.* Answer to what we say, for you are a stranger to the blood of Thomas.

BEREFORD, C.J. He is trying to oust you [the plaintiff] from the action, for if you are not of the whole blood you shall never have the tenements by the assize. Besides, you [the defendant] are a stranger to them, and you cannot say anything to estrange them except by means of the [assize].<sup>1</sup>

*Willoughby.* He wishes to estrange [the plaintiff] as not being of the whole blood, and this he ought<sup>2</sup> to aver and prove, and it amounts to no more than that we are not next heir. Ready [to aver that we are].

Issue joined.<sup>3</sup>

<sup>1</sup> The text has 'by means of the seisin.' The confusion between *la seisine* and *lassise* was easy. However, we are not sure of Bereford's meaning.

<sup>2</sup> The text seems to say 'ought not.'

But perhaps the words *et ceo . . . prover* are a rhetorical question.

<sup>3</sup> As we read the case, the plaintiffs succeed in securing the wide issue 'next heir.'

23. DIVERS NOTES.<sup>1</sup>

I. (*De debito.*) Nota que totez choses que sount noumbrez, estre<sup>2</sup> deners, peysez ou mesurez, deyvent estre demandez com dette, sic: 'Precipe quod reddat tot quarteria furmenti vel tot saccos lane precii etc.' et ne mye 'catalla ad valenciam.' Et deit homme counter que 'a tort ly detient taunt de quartiers de furment, pris de taunt, et pur ceo a tort,' et ne mye 'les queux ly deit etc.'

II. (*De warrantia.*) Un home entra en la garrantie, et pus demanda oy de la resomonce et del procès. Et ne poeyt avoir, pur ceo q'il fust entré en la garrantie et issi partie. Mès il dust avoir demandé avant q'il fust entré etc.

III. (*Somounse, essone et comune*<sup>3</sup> *essone de service le Roy, defet par la ley.*) Un home se fist assonier a un jour, et pus fit defaute, et pus se fist essonier de service le Roy. A un autre jour fist sa ley q'il ne fut pas somouns solom ley de terre, ne q'il ne se fist essonier a tel jour, ne que il ne se fist essonier de service le Roy a tel jour etc.

IV. (*Per que servicia.*) Nota qe en un *per que servicia* le tenaunt tendi d'averer q'il tent par feauté sanz autre services. Et cely a qi la conisaunce fut fete tendi d'averer q'il tent par homage et escuage. Et fut l'averement receu.

*Staunt.* Le enroulement serra que le conisour ne nul de ses auncestres ne furent seisis si noun de feauté.<sup>4</sup>

V. (*Per que servicia.*) En un *per que servicia* le tenaunt dit q'il n'avoyt ren en lez tenementz, si noun joynt ove sa femme, et tendi l'averement. L'autre dit q'il fut soul tenaunt le jour de la conisaunce. Et fut l'averement receu, pur ceo q'il ne dust attourner sanz sa femme.

<sup>1</sup> Text from *L.*    <sup>2</sup> ee *with stroke above L.*    <sup>3</sup> Probably 'comune' should precede the first 'essone.'    <sup>4</sup> defaute *L.*



## 23. DIVERS NOTES.

I. (*Debt and detinue.*) All<sup>1</sup> things that consist in number (except money), weight or measure,<sup>2</sup> should be demanded by way of debt, thus: 'Command that he render so many quarters of wheat' or 'so many sacks of wool, of such a price,' and not 'chattels to the value of etc.' And in the count one shall say 'wrongfully he detains from him so many quarters of wheat, of such a price, and wrongfully because,' and not 'and the which he owes etc.'

II. (*Entry into warranty.*) A man entered into warranty and afterwards prayedoyer of the resummons and the process. And he could not have it, for he had entered into the warranty and so become a party. But he ought to have demanded it before entering.

III. (*Summons, common essoin and essoin for the King's service, defeated by [wager of] law.*) A man had himself essoined on one day, and then he made default, and then had himself essoined 'for the King's service.' On a later day he made his law that he was not summoned by the law of the land, and that he did not have himself essoined on such a day, and that he did not have himself essoined of the King's service on such [another] day.

IV. (*Per quae servitia.*) Note<sup>3</sup> that in a *per quae servitia* the tenant tendered to aver that he held by fealty without other service. The conusee tendered to aver that he held by homage and escuage. The averment was received.

STANTON, J. The enrolment will be that neither the conusor nor any of his ancestors were ever seised of anything but fealty.

V. (*Per quae servitia.*) In a *per quae servitia* the tenant said that he had nothing in the tenements except jointly with his wife, and tendered to aver this. The [conusee] said 'sole tenant on the day of the conusance.' And the [tenant's] averment was received, for he ought not to attorn without his wife.

<sup>1</sup> See case 17 on p. 21 above.\*

<sup>2</sup> See the French. We suppose that *estre* [Lat. *extra*] only governs *deners*.

<sup>3</sup> The note from the record of the case to which this and the following note relate is printed in the Appendix.

PLACITA DE TERMINO S. MICHAELIS ANNO  
 REGNI REGIS EDWARDI FILII REGIS  
 EDWARDI QUARTO.

1. LE BRET *v.* TOLTHORPE.

Forme de doun ou le bref abaty pur ceo q'il avoyt fait omissioun de cely qe survesquit l'auncestre, tut ne tendy il estat.

I.<sup>1</sup>

Nota en un bref de fourme de doun en le *descendere* ou le demaundaunt counta de la seisine R. etc., qi dona a une Johane<sup>2</sup> a li et a les heirs de son corps engendrez; de Johane<sup>3</sup> descendi a William com a fitz q'ore demaunde etc.

*Denom.* Il i avoit un Henri fitz et heir Johane eigné a<sup>4</sup> William, de qi il ount fait omissioun et par counte et par bref; jugement etc.

*Lauf.* Il n'attendy unques estat, et ceo est un bref doné en lieu de mortdauncestre ou il ne covient mye faire mencion s'il etc., nec per consequens hic.

*Scrop.* Bref de fourme de doun si est un bref de droit<sup>5</sup> en soun cas, et vous avez counté par my le droit etc., et Henri etc., et per consequens il avoyt droit; jugement etc.

*Lauf.* Coment q'il survesquit, il n'attendy unques estat; prest etc.

*Hervi.* Pur ceo qe vous ne poez dedire qe Johane<sup>6</sup> n'avoit un fitz et heir Henri par noun eigné de William, et survesqui, de qi vous avez fait omissioun par bref et en counte, par quei agarde la court qe vous ne preignez rien par vostre bref etc.

II.<sup>7</sup>

Henri le fyz Johane porta la forme de doun vers Thomas Marke,<sup>8</sup> et demaunda certenz tenemenz, les queux Michel de Hopp'<sup>9</sup> dona a

<sup>1</sup> Text from *A*: compared with *D*, *T*. Headnote from *A*.

<sup>2</sup> Johan *D*, *T*.

<sup>3</sup> Johan *D*, *T*.

<sup>4</sup> de *D*.

<sup>5</sup> *Om.* de droit *A*; *ins.* *D*, *T*.

<sup>6</sup> Johan *D*, *T*.

<sup>7</sup> Text from *P*: compared with *R*.

<sup>8</sup> de March' *R*.

<sup>9</sup> Hept *R*.

## PLEAS OF MICHAELMAS TERM IN THE FOURTH YEAR OF KING EDWARD II. (A.D. 1310).

### 1. LE BRET *v.* TOLTHORPE.<sup>1</sup>

Formedon in the descender. Writ abated for the omission of a person who inherited, though it is alleged that he never 'attained an estate.' The objection is taken after view demanded.

#### I.

In a writ of formedon in the descender the demandant counted on the seisin of R., who gave to one Joan and the heirs of her body begotten; and from Joan [the right] descended to William, the demandant, as son etc.

*Denom.* There was one Henry, son and heir of Joan, older than William, of whom they have made omission both in count and writ. Judgment etc.

*Lauffer.* He never attained an estate, and this is a writ given in the stead of a mortdancestor, in which there is no need to mention [such an one], and therefore there is no need here.

*Scrope.* A writ of formedon is a writ of right in its own case, and you have counted of the right, and Henry [was heir] etc., and therefore he had the right. Judgment etc.

*Lauffer.* Although he survived, he never attained an estate. Ready etc.

STANTON, J. Since you cannot deny that Joan had a son and heir, Henry by name, older than William, or that he outlived [Joan], and you have made omission of him in writ and count, therefore the Court awards that you take nothing by your writ etc.

#### II.

Henry, son of Joan, brought the formedon against Thomas Marke,<sup>2</sup> and demanded certain tenements, which Michael de Hoppe gave to

<sup>1</sup> This case is Fitz. *Formedon*, 48.

<sup>2</sup> The reporter apparently invents fancy names. It may not, however, be

quite certain that the two reports relate to the same case.

Johane de Stoke<sup>1</sup> et a les heirs de soun corps issaunz, et que post mortem prediete Johanne predicto Henrico filio et heredi prediete Johanne descendere debent per formam etc.<sup>2</sup>

*Malm.* Cesti H[enri] avoit un frere eygné de ly Johan, qi tendist estat après la mort Johane, de qi il fet omistioun.<sup>3</sup> Jugement du bref.

*Hedoun.* A ceo ne devez avenir, qe aultrefois demaundastes la vewe et par taunt acceptastes le bref et la descente bone. Jugement si après le bref affermé a tiel chalenge devet avenir.<sup>4</sup>

*Malm.* Vous deysez bien si nous fusoms<sup>5</sup> a la forme du bref, mès donqe sumes nous<sup>6</sup> a un q'il<sup>7</sup> avoit un tel<sup>8</sup> qe tendy estat.

*Hedon.* La excepcioun n'est pas pleyne si vous ne diez q'il tendi estat et fut seisi.

*Staunton.* Donqe grauntez vous<sup>9</sup> q'il tendi estat, mès qe<sup>10</sup> il ne fut poynt seisi.

*Hedon.* Donqe voloms averer q'il ne fut unqes seisi.

*Ber.* Qaunt il survesquit<sup>11</sup> donqe fut le droit seen,<sup>12</sup> de qi vous n'avez pas fet mencioun.

*Stauntone.*<sup>13</sup> Depuis qe vous ne poez dedire q'il ne survesquit sa miere,<sup>14</sup> et vous avez fet omistioun etc., et a vous ne put nul droit descendre si noun par my li, si agarde ceste court qe vous ne pregnez etc.

{<sup>15</sup> Cuius contrarium videtur anno xij. en un bref de forme de doun en le descendre termino Michaelis, T. le fyz Symound.}

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 79, Oxon.

Henry le Bret, by his attorney, claims against Thomas of Tolthorpe and Alice his wife three messuages and four virgates of land with the appurtenances in Little Cheleworthe by (*iuxta*) Miltone,<sup>16</sup> which Roger Gernon gave to Joan, daughter of Roger, son of Roger Gernon, and the heirs of the body of Joan issuing, and which after the death of Joan ought to descend to the said Henry, son and heir of Joan, by the form of the said gift etc. And thereupon he says that Roger Gernon was seised of the said tenements with the appurtenances, and gave them to Joan and the heirs of her body etc. in form aforesaid; and that Joan was seised thereof in her demesne as of fee and of right by the form of the said gift in time of peace, in the time of Edward [I.], by taking thence esplees to the value etc.; and

<sup>1</sup> Scot' *R.*    <sup>2</sup> In French *R.*    <sup>3</sup> il ne ount fet nul mencioun *R.*    <sup>4</sup> *Om.* this sentence *P*; *ins. R.*    <sup>5</sup> si nostre exceptioun fut *R.*    <sup>6</sup> bref, dount seems *R.*  
<sup>7</sup> un si ily *R.*    <sup>8</sup> *Ins. J. R.*    <sup>9</sup> grauntez bien *R.*    <sup>10</sup> *Om.* qe *R.*    <sup>11</sup> Il tendi estat apres la morte sa miere *R.*    <sup>12</sup> seon par descente *R.*    <sup>13</sup> *Hervi R.*    <sup>14</sup> *Ins.* et ensi tendi estat *R.*    <sup>15</sup> Note in the margin of *P.*    <sup>16</sup> Mod. Chilworth, near Great Milton.



Joan of Stoke and the heirs of her body issuing, 'and which after the death of Joan ought to descend by the form [of the gift] to the said Henry as son and heir of Joan.'

*Malberthorpe.* This Henry had an elder brother, John, who after Joan's death attained an estate, and of him he has made omission. Judgment of the writ.

*Hedon.* To that you cannot get, for before now you demanded a view, and thereby you accepted the writ and the descent as good. Judgment, whether after the writ is affirmed, you can get to a challenge of this kind.

*Malberthorpe.* What you say would be right if our plea went to the form of the writ. But [let us] be agreed<sup>1</sup> as to whether there was such an one who attained an estate.

*Hedon.* The plea is not complete unless you say that he attained an estate and was seised.

STANTON, J. Then you allow that he attained an estate, although he was not seised.

*Hedon.* Then we will aver that he was never seised.

BEREFORD, C.J. When he outlived [his mother] the right was his [by descent], and you have made no mention of him.

STANTON, J. Since you cannot deny that he outlived his mother, and you have made omission of him, and no right could descend to you except through him, this court awards that you take [nothing] etc.

{<sup>2</sup> The contrary of this is found in the Michaelmas term of A.R. 12 in a writ of formedon in the descender [concerning] T. son of Simon. }

**Note from the Record** (*continued*).

from Joan the right etc. descended by the form of the said gift to this Henry, the now demandant as son and heir.

And Thomas and Alice, by their attorney, come and defend his right when etc.; and they say that they ought not to answer him to this writ to such a count etc.; for they say that Joan, to whom etc., had a son, one John by name, elder brother of Henry, who outlived Joan and to whom the tenements ought to have descended by the form aforesaid, and of him Henry has made omission in his writ, and therefore they pray judgment of the writ etc.

And Henry cannot deny this etc.

Therefore it is awarded that Thomas and Alice go thence without day etc.; and that Henry take nothing by his writ, but be in mercy.

<sup>1</sup> One book says 'then we are at one.'

<sup>2</sup> A note in the margin of one book.

2. PETSTEDE *v.* MARREYS.<sup>1</sup>

Transgressio de la tierce party de bestes a ly assignez en dower enchacez, et le bref agardé bone.

De transgression de bestes pris et enportez non obstante qe le park etc. ne fut al pleyntif, eynez al defendaunt. Et le bref agardé bone Et pus dit de ren coupable.

Thomas Peyteyvine et A. sa feme porterent bref vers un A. en baunk le Roy de trespas et counta<sup>2</sup> coment la tierce partie des bestes del park de C. si<sup>3</sup> fust assigné a mesme ceste A. en dower del assignement mesme cesti A. etc., la viendront etc. ov force et armes et la tierce partie etc. aferaunt al dower l'avauntdit A. pristrent et enporterent.

*Clav.* Il ount counté q'il deussent avoir venuz<sup>4</sup> ov force etc. et entrez en le park et pris etc. la tierce partie des bestes etc., en supposaut le park estre a nous, et desicome lay ne seoffre poynt qe homme doyve damages recoverir pur le venir ov force et armes a soun park demene, jugement si a tiel counte devez estre r[espondu].

*Will.* La cause qe nous devoms recoverir damages n'est pas taunt-soulment le venir ov force et armes, einz la prise et l'enport[ement]<sup>5</sup> de nos bestes. Coment qe nous avoms fait mencioun del venir etc. ceus sount qe par<sup>6</sup> parouilles etc. Force et armes ne doynent<sup>7</sup> cause de damage, einz le trespas etc. ; par qei le bref est<sup>8</sup> assez bon.

{ *Will.*<sup>9</sup> La cause de nostre bref est a recoveryr damages de noz bestez prisez et enparkés; dount ceo afert auxi a trespas a nous fet de la prise des bestes cum a vente de boys.

*Brabazon ad idem.* Coment qe 'a force et as armes' soit contenu en le bref, de ceo ne bye ele mie a recoveryr damages, einz pur trespas fet a ly. Et pur ceo le bref est assez bon. }

*Hert.* La ou il dient qe nous venymes etc. qe<sup>10</sup> nous deussoms avoir pris la tierce partie des bestes etc. ou lez ij. parties,<sup>11</sup> en supposaut recoverir chatel q'est en commun nyent several, jugement si a tiel bref devez estre r[espondu].

*Will.* La tierce partie<sup>12</sup> nous assigné etc. et nous seisi a prendre

<sup>1</sup> Text from A: compared with D, T, P. Headnotes from A and D.  
<sup>2</sup> counterent P. <sup>3</sup> si D, T; sil A. <sup>4</sup> qil vyndr' D. <sup>5</sup> lenporter T.  
<sup>6</sup> Om. par D, T. <sup>7</sup> dounent D. <sup>8</sup> nest D. <sup>9</sup> Substitute these two speeches for previous speech P. <sup>10</sup> et D. <sup>11</sup> Ins. sount a nous P. <sup>12</sup> Ins. a D, T.

2. PETSTEDE *v.* MARREYS.<sup>1</sup>

A man assigns to a woman as part of her dower a third part of a park. She can bring an action of trespass charging him with coming to the park with force and arms, and taking a third part of the beasts assigned to her.

Thomas Peyteyvine and [Joan] his wife brought a writ of trespass against one A. in the King's Bench, and counted that, whereas the third part of the beasts in the park of C. was assigned to [Joan] in dower by the assignment of this same A., he came with force and arms and took and carried away the third part belonging to her dower.

*Claver.* They have counted that he came with force etc. and entered the park and took etc. the third part of the beasts etc., thus supposing that the park is ours; and since the law will not suffer that damages be recovered for a coming with force and arms to one's own park, [we pray] judgment whether they should be answered to such a count.

*Willoughby.* The cause why we should recover damages is not merely the coming with force and arms, but the taking and carrying away of our beasts. Although we have made mention of the coming etc., these are only words [of form]. It is not the force and arms that give cause of [action for] damage, but the trespass etc. So the writ is good enough.

{ *Willoughby.*<sup>2</sup> The cause of our writ is to recover damages for our beasts taken and impounded, and that taking of beasts is a trespass done to us as would be a sale of wood.

BRABAZON, C.J., to the same effect. Although 'with force and arms' be contained in the writ, she does not expect to recover damages for that; but rather for the trespass done to her. So the writ is good enough. }

*Hartlepool.* Whereas they say that we came etc., we are charged with having taken a third part of the beasts where the other two parts [are ours], their supposition being to recover [damages for] a chattel held in common and not severed. Judgment, whether you ought to be answered to such a writ.

*Willoughby.* The third part [was] assigned to us, and we were

<sup>1</sup> This case is Fitz. *Trespas*, 233. The proper names are taken from the record, of which a note is printed in the Appendix.

<sup>2</sup> In one book these two speeches take the place of the last speech.

cheseun manier de profit regardaunt a la tierce partie, par qei nous demaundoms jugement si le bref vers luy ne gyse.

*Hert.* Si vous soyez destourbé et <sup>1</sup> ousté etc., porte <sup>2</sup> l'assise et noun pas bref de trespas.

*Brab.* Il mesme est seisi de la tierce partie du profit par my et par tout ou <sup>3</sup> il ne pout par aultre bref qe par cesty estre aydé.

Et tunc agarda le bref bon. Et tunc dixerunt de rien coupable etc. Ideo etc.<sup>4</sup>

### 3. SCALDEFORD v. VAUDEY (ABBOT OF).

Entré, si jeo mette avaunt fait un a qy le heritage descendit et survesquit, tut ne fait home mencioun de ly en countant, vous r[espondrez] a fait. Et si bastardie seit alegé en sa persone, n'estut my conustre le fait.

#### I.<sup>5</sup>

Un Geffrey porta un bref d'entré *ad terminum qui preteriit* vers l'Abbé de D. countaunt de la seisine un Geffrey soun pierre ; de G. descendy a Thomas com a fitz, et de Thomas a Geffrey com a friere, q'ore demande etc.

*Fris.* Geffrey soun pierre de qi seisine il demaunde devia deynz le terme, après qi mort Johan fitz et heir mesme celuy Geffrey relessa et quiteclama a un R. nostre predecessour tut le droit q'il avoit etc. et obliga luy et cez heirs a la garrauntie. Jugement si encountre etc.

*Scrop.* Nous avoms counté devers vous de la seisine un Geffrey nostre pierre et de Geffrey a Thomas et de Thomas a nous. Et vous avet mys avaunt un fait com pur barre de celuy de qi nous ne clamoms rienz ne n'est pas nommé en nostre descente, ou vous mesme par pleder al actioun avet <sup>6</sup> affermé la descente en supposaut q'il n'y avoient aultres heirs fors ceaux des ceux nous feymes mencioun. Jugement si par le fait celuy qe n'est par le fait nostre auncestre nous peusset barrer.

*Fris.* Coment qe nous avoms affermé vostre <sup>7</sup> descente, par taunt n'avoms pas perdu r[espouns] qe chiet al accioun.

*Berr.* Coment qe vous eietz entrelessé choce qe <sup>8</sup> purra grever, par taunt n'ont il pas perdu choce qe lour purra valer. Pur ceo r[esponet] a ceo q'il vous dient.

<sup>1</sup> ou D.    <sup>2</sup> portez T.    <sup>3</sup> par ou D.    <sup>4</sup> Claver. De riens coupable etc. P.  
<sup>5</sup> Text from A : compared with D, T. Headnote from A.    <sup>6</sup> avoyt' A ; avetz D  
avoit T.    <sup>7</sup> la D.    <sup>8</sup> Ins. vous D.



seised of taking every kind of profit concerning the third part. So we demand judgment whether the writ does not lie against him.

*Hartlepool.* If you are disturbed and ousted, bring the assize, and not a writ of trespass.

BRABAZON, C.J. [The demandants] are seised of the third part of the profit through and through (*parmi et partout*), and [they] can be aided by no other writ than this.

Then he adjudged the writ good. Then [the defendants] pleaded 'Not guilty.' Therefore etc.

### 3. SCALDEFORD *v.* VAUDEY (ABBOT OF).<sup>1</sup>

Entry *ad terminum* on a lease by the demandant's father. Descent is traced with omission of an elder brother of the demandant, who outlived the father. The tenant, though he has not sought to abate writ or count, may plead a release with warranty by the elder brother.

#### I.

One Geoffrey brought his writ of entry *ad terminum qui praeteriit* against the Abbot of D., counting on the seisin of one Geoffrey, his father; and he made the descent from G. to Thomas as son, and from Thomas to [himself] as brother etc.

*Friskenev.* Geoffrey his father, of whose seisin he demands, died within the term, and after his death John, son and heir of this same Geoffrey, released and quitclaimed to one R. our predecessor all the right that he had etc. and bound himself and his heirs to warranty. Judgment whether against [his deed] etc.

*Scrope.* We have counted aganst you of the seisin of one Geoffrey, our father, [with descent] from Geoffrey to Thomas and from Thomas to us. And you have put forward as a bar a deed of one from whom we claim nothing and who is not named in our descent, whereas by pleading to the action you yourselves have affirmed the descent, having supposed that there were no heirs save those whom we mentioned. Judgment, whether you can bar us by the deed of one who is not our ancestor.

*Friskenev.* Although we have affirmed your descent, we have not thereby lost an answer which lies to the action.

BEREFORD, C.J. Although you [the demandant] have omitted what might hurt you, they have not thereby lost something that may avail them.<sup>2</sup> So answer to what they tell you.

<sup>1</sup> The proper names are taken from the record, of which a note is printed in the Appendix.

<sup>2</sup> The other versions of this dictum should be compared.

*Scrop.* Johan qi fait il boutent avaunt pur nous barrer est bastard ; prest del averer.

*Fris.* Conusset le fait primes ou le dedites, et puis dites etc.

*Scrop.* Il ne covient, q'il n'est pas nostre auncestre.

*Fris.* Prest qe mulieré.

Et ceo<sup>1</sup> cy serra trié en ceste court, purceo qe celui en qi persone la bastardye est allegé n'est pas partie al plee etc. Et hec est causa.

## II.<sup>2</sup>

Geffroi de Thornetone<sup>3</sup> porta bref vers l'Abbé de Killeshille<sup>4</sup> et demaunde etc. ; et prist son title de la seisine un G. son pere, qi heir il est etc., desc[endaunt] etc. a T. com a fitz, de T. a G. q'ore demaunde, com a frere, et en les queux le dit Abbé n'ad entré si noun pus le lees qe le dit G. pere etc. de ceo en fit a R. de L.<sup>5</sup> predecessour mesme cesti Abbé a terme qe passé est etc., et les queux après etc.

*Malb.* Il ne<sup>6</sup> put accioun avoir, qe verité est qe<sup>7</sup> mesme cesti G. lessa etc. a N. nostre predecessour *ut supra* ; deinz quele terme celi G. morust ; après qi mort un J. fitz et heir mesme celui G. relessa et quiteclama etc. en la seisine le dit R. nostre predecessour et obliga etc. ; dont si nous fussions enpledé etc. Jugement etc. (Et mist avaunt fet etc.)

*Scrop.* viso facto et audito.<sup>8</sup> Sire, ceo vous ne deit valer, qar vous avez<sup>9</sup> affirmé bref et counte,<sup>10</sup> et par taunt la descente. Et la ou il dient J. survesquit G. et relessa, ceo defet nostre descente.<sup>11</sup> Et demaundoms jugement si a tiel r[espouns] contrariaunt a la descente primes affirmé<sup>12</sup> pussez avenir.

*Fris.* La ou vous dites qe nous avoms pledé al accioun et par taunt affirmé la descente, nostre plè si est en defessaunt<sup>13</sup> vostre descente, et issint n'est ele affirmé. Et nous avoms mis avaunt le fet vostre auncestre ; sur quei vous issistes d'enparler,<sup>14</sup> a quei vous ne responez nent. Jugement.

*Denom.* Nous avoms counté de G. desc[endaunt] a T. *immediate*, ou vous avez dit qe après la mort G., J. survesqui et relessa et quite-

<sup>1</sup> nostre auncestre muliere prest etc. Et ceo *A, T.* Text from *D.* <sup>2</sup> Text from *M* : compared with *P, R.* <sup>3</sup> Thornette *P.* <sup>4</sup> Killushulle *P.* <sup>5</sup> *H. P.* <sup>6</sup> *Om. ne M ; ins. P, R.* <sup>7</sup> qe la ou il prent son title de la seisine G. son piere nous conusoms bien *R.* <sup>8</sup> *Om. viso . . . audito P.* <sup>9</sup> Sire vous avez bien entendu coment il ount respondu al accion et par taunt ount il *R.* <sup>10</sup> afferme le bref bon *P.* <sup>11</sup> relessa la graunterent il nostre descente *P.* <sup>12</sup> *Ins. com il ount al accion respondu P.* <sup>13</sup> nostre escrit defet *P.* <sup>14</sup> vous enparlastes *P.*

*Scrope.* John, whose deed they put forward to bar us, is a bastard. Ready to aver it.

*Friskenev.* First confess or deny the deed, and then say [that he was a bastard].

*Scrope.* No need for that, for he is not our ancestor.

*Friskenev.* Ready [to aver] that he was legitimate.

And this is to be tried in this court, the cause [for such a trial] being that he in whose person bastardy is alleged is not party to the plea etc.

## II.

Geoffrey of [Scaldeford] brought his writ against the Abbot of [Vaudey] and demanded etc.; and he took his title in the seisin of one G., his father, whose heir he is, with a descent to T. as son and heir, and from T. to G., the demandant, as brother; 'and into which the Abbot has no entry unless by the lease which G. the father etc. made thereof to R. of L., predecessor of this same Abbot, for a term which has expired etc., and the which after etc. [should revert to the demandant].'

*Malberthorpe.* Action he cannot have, for the truth is that this G. [the father] leased to our predecessor as above, and that within the term G. died, and that after his death one J., son and heir of G., released and quitclaimed etc. in the seisin of R. our predecessor and bound etc., so that were we impleaded etc.<sup>1</sup> Judgment etc. (And he put forward a deed etc.)

*Scrope*, having seen and heard the deed. Sir, that ought not to avail you, for you have affirmed writ and count, and consequently the descent. And whereas they say that J. outlived G. and released, that [goes to] defeat our descent. We pray judgment whether you can get to such an answer contrary to the descent that you have previously affirmed.

*Friskenev.* Whereas you say that we have pleaded to the action and thereby affirmed the descent, our plea goes to defeat your descent, so that it is not affirmed. And we produced the deed of your ancestor, and thereupon you went out to imparl, and to it you give no answer. Judgment.

*Denom.* We have counted from G. with an immediate descent to T.; whereas you have said that after G.'s death J. survived and

<sup>1</sup> The unfinished formula is that of a rebutter by warranty.

clama. Et en taunt vous fetes meen entre G. et T., q'est <sup>1</sup> purement contrarie a la descente, la quele par vostre countrepleder <sup>2</sup> al accioun avaunt avetz affermé. Jugement si a ceo pussez avenir.

*Ber.* Tut eiez vous <sup>3</sup> entrelessé chose qe nuyre vous <sup>4</sup> poet, il ne voleit mye entrelessier chose qe valer vous put. <sup>5</sup> Et pur quauntqe <sup>6</sup> vous eiez unqore dit il vous ount assez r[espondu].

*Scrop.* La ou l'en dit qe J. survesqui et relessa *ut supra*, sa quiteclamaunce non nocebit quia bastardus fuit. <sup>7</sup>

*Fris.* Vous issistes <sup>8</sup> d'enparler sur le fet, a quei vous responez nent. Jugement.

*Scrop.* Jeo lui ad fet tiel quod non oportet respondere a son fet, qar jeo lui ay tut estraungé. <sup>9</sup>

*Malb.* Mulieré : prest etc.

Ideo preceptum est vicecomiti etc., et non episcopo quia ille de quo etc. non fuit pars placiti. <sup>10</sup>

### III. <sup>11</sup>

Gieffrei de Stall' porta soun bref d'entré vers l'Abbé de Waudone etc., et dit q'il n'ad entré sy noun pas le lees qe un G. soun besael, qi heir il est, de ceo en fit a H. predecessour mesme cestui Abbé a terme qe passé est. Et fit sa descente de G. a T., de T. a R., de R. a T. come frere q'ore demande.

*Malm.* Nous conissons bien qe G. vostre ael fust seisi etc., et lessa les tenemenz al Abbé a terme de vj. aunz, et q'il morust deinz le terme. Mès nous vous dyoms q'il avoit un fuiz et heir J. eisé de T., qe sourvesquit G., qe relessa et quiteclama en la seisine a lui et ses successours tout le droit q'il avoit, et lia lui et ses heirs a la garantye. (Et myst avant fait qe ceo tesmoigne.) Jugement si encountre le fait J. qi heir vous estes pussetz ren demander.

*Scrop.* Cest excepcioun est al actioun, et par taunt avietz affermé le bref et le counte pur bon et la descente. Et nous avoms fait

<sup>1</sup> la quele chose est R. <sup>2</sup> pleder avaunt P; pleder R. <sup>3</sup> eyent il P. <sup>4</sup> lour R. <sup>5</sup> Om. il . . . put R. <sup>6</sup> rien qe P. <sup>7</sup> ceo nous ne deit grever qe il fut bastard P; *sim.* R. <sup>8</sup> estes issue R. <sup>9</sup> Scrop. Il fut bastard par quei il ne covent pas respoundre a soun fet P; Jeo lay fet tiel qe il ne moi covent nent a son fet respondre qar jeo lay fet a moi tote estraunge par qey etc. R. <sup>10</sup> prest etc. Et alii eontra P; vicecomiti, et sic nota quod hoc debet inquiri in curia domini Regis, quia ille in cuius persona non est pars placiti etc. R. <sup>11</sup> Text from B.



released and quitclaimed. And insomuch as you make a mesne between G. and T., this is directly contrary to our descent, which you had already affirmed by pleading to the action.<sup>1</sup> Judgment, whether you can get to that.

*Bereford, C.J.* Albeit you [the demandant]<sup>2</sup> have omitted something that might hurt you, they do not wish to omit something that may avail [them]. And for anything that you have yet said, they have answered you enough.

*Scrope.* Whereas they say that J. survived and released as above, his quitclaim will not hurt, for he was bastard.

*Friskeny.* You went out to imparl upon the deed, and to it you make no answer. Judgment.

*Scrope.* I have made [J.] to be such that there is no need to answer to his deed, for I have utterly estranged him.<sup>3</sup>

*Malberthorpe.* Legitimate. Ready etc.

Therefore the sheriff is commanded etc.—not the bishop, for he who [is said to be bastard] was no party to the plea.<sup>4</sup>

### III.

Geoffrey<sup>5</sup> of [Scaldeford] brought his writ of entry against the Abbot of [Vaudey] and said that he had no entry unless by the lease which one G., his great-grandfather,<sup>6</sup> whose heir he is, made of that [land] to one H., the Abbot's predecessor for a term that has expired. And he made his descent from G. to T., from T. to R., and from R. to [G.], the demandant, as brother.

*Malberthorpe.* We freely confess that G., your grandfather, was seised etc., and leased the tenements to the Abbot for a term of six years, and that he died within the term. But we tell you that he had a son and heir, J., older than T., who outlived G. and released and quitclaimed in his [the late Abbot's] seisin to him and his successors all the right that he had, and bound himself and his heirs to warranty. (And he produced a deed which witnessed this.) Judgment, whether you can demand anything against the deed of J., whose heir you are.

*Scrope.* That plea is to the action, and therefore you have affirmed the writ and the count and the descent as good. And we

<sup>1</sup> Or 'by counterpleading the action.'

<sup>2</sup> Some of the books seem to give this dictum in a confused manner.

<sup>3</sup> Or 'I have made him bastard and so there is no need to answer to his deed.'

<sup>4</sup> See on the opposite page a Latin note which is given by one of our books.

<sup>5</sup> This version is given in the Old Edition, f. 87.

<sup>6</sup> So at this place; but see below,

nostre descente de G. a T. come a heir *immediate*, et ceo n'avet mye dedit ne chalengié. Et ore mettet avaunt le fait un J. et dites q'il est fuiz et eisnee, q'est contrairiant a la descente qe vous affermé avietz. Jugement si par soun fait nous pussetz rebouter.

*Ber.* En ceo bref d'entré et autres brefs de possessioun si come d'ael etc. n'est mye mestier a chalaungier<sup>1</sup> omissioun de sanke,<sup>2</sup> qar mesqe un homme eust xij. fuiz et vous feissez la descente del auncestre tauntqe al puisné en la ligne, entrelessant l'eigné et toux les autres qe sourvesquerent le pere, tele<sup>3</sup> omissioun n'abate pas counte ne bref. Mès par tant n'est mye le tenaunt forclos q'il ne puist usier l'aquitance l'eysné fait al tenaunt; par quel fait le demandant porra estre rebouté de s'actiounne; qar mesque le demandant entrelesse chose qe grever lui pout, par tant ne doit mye le tenant oblier chose qe valer lui porra en deffense de soun droit. Et pour ceo r[espone]z au fait.

*Scrop.* Le fait J.<sup>4</sup> ne nous doit barrer, qar il fuist bastard.

*Malm.* Fuist il fuiz G.?

*Scrop.* A ceo n'ay jeo mestier a respondre, qar il n'est pas mon auncestre.

#### IV.<sup>5</sup>

Un Johan porta sun bref d'entré a terme qe passé est vers un A. Priour de C., et dist qe un Geffray fust seisi de ceux tenemenz et lessa etc.; de G. descendi le droit etc. a T. com a fiz et heir; de T. pur ceo etc. a G. com frere et heir, qe ore demande etc.

*Herle* defendi etc. et conust qe G. avoit lessé les tenemenz a A. predecessour cestui Priour a terme de xvj. anz; et dist outre qe un Johan fiz et heir G. et<sup>6</sup> tendit estat issi q'il survesqui G., relessa et quiteclama au dit A. priour predecessour etc. par sun fet, qe cy est. Et demandoms jugement si encontre le fet Johan puissez action avoir.

*Denham.* A ceo ne avendrez mie, qar ceo est un r[espons] al action, et ore a chalanger nostre descente ne avendrez mie.

*Ber.* Il puet estre de eux com avynt altrefois cienz en le temps Brompton de une povere femme qe porta bref et conta parmy une femme qe fist felonie. Et de ceo fust ele chalangé; et tote la curt avoit pité de la povere femme; et ele ne poet estre aidé, qar si ele

<sup>1</sup> chaung' B.    <sup>2</sup> françt' B.    <sup>3</sup> quele B.    <sup>4</sup> G. B.    <sup>5</sup> Text from Y, f. 94d.  
<sup>6</sup> Om. et (?)

have made our descent from G. to T. as to an immediate heir, and that you have not denied or challenged. And now you produce the deed of J. and say that he is the eldest son, which is contrary to the descent that you have affirmed. Judgment, whether you can rebut us by his deed.

BEREFORD, C.J. In this writ of entry and in other writs of possession, such as ael etc., there is no need to challenge an omission of blood, for, albeit a man has twelve sons and you make the descent from the ancestor to the youngest in the line, leaving out the eldest and all the others who outlived the father, such omission does not abate the count or writ. All the same the tenant is not debarred from using the release of the eldest son made to the tenant, and by that deed the demandant may be rebutted from his action; for albeit the demandant omits something that might be to his disadvantage, the tenant is not bound to forget something that will avail him in the defence of his right. So answer to the deed.

*Scrope.* The deed of J. ought not to bar us, for he was bastard.

*Malberthorpe.* Was he the son of G.? <sup>1</sup>

*Scrope.* To that I need not answer, for he is not my ancestor.

#### IV.

One John brought his writ of entry *ad terminum qui praeteriit* against one A., Prior of C., and said that one G. was seised of the tenements and leased them etc.; and from G. the right descended to T. as son and heir; and from T., because [he died without issue], to G., the now demandant, as brother and heir.

*Herle* defended etc. and confessed that G. leased the tenements to A., predecessor of this Prior, for the term of sixteen years, and further said that one John, son and heir of G., attained an estate, having outlived G., and released and quitclaimed to the said A., predecessor etc., by his deed, which is here. And we pray judgment whether you can have action against the deed of John.

*Denom.* To that you cannot get, for that is an answer to the action, and you cannot now get to challenge our descent.

BEREFORD, C.J. It may happen in their case as it happened here in Brompton's <sup>2</sup> time in the case of a poor woman who brought a writ and counted through a woman who [had] committed felony. And on this point she was challenged, and the whole Court had pity on the

<sup>1</sup> 'Is this the deed of J.?' would seem from the other reports to be a more likely question.

<sup>2</sup> William of Brompton, a judge of Edward I.'s time and one of the delinquents of 1289.

eust entrelessé la femme felon sun bref eust esté assez bon. Auxi par de cea. Il out entrelessé celui Johan pur ceo q'il ne fut onkes seisi des tenemenz.

*Herle.* Qei r[esponez] au fet Johan vostre auncestre?

*Denham.* Sun fet nous ne deit grever, qar il est bastarde: prest etc.

Et alii contrarium.

#### 4. ESTHALLE *v.* PENBRIDGE.

Assise de novele disseisine, si jeo sey un foithe excusé par verdit d'assise, ceo est bone barre altrefoithe tut eiez disseisour.

##### I.<sup>1</sup>

Nota<sup>2</sup> un bref de novele disseisine porté vers ij., dount l'un r[espount] et dit qe assise ne deit estre qe aultrefoitz mesme celui q'ore se pleynt si porta un assise de novele disseisine et vers nous mesmes etc. de mesme lez tenemenz etc., ou il fust r[espondu] q'il ne disseisi pas etc., et ceo fust trové par verdit d'assise, et demaundoms jugement si saunz moustrer title de temps plus tardif si assise deyve estre.

*Denom.* Coment qe aultrefoitz il mesprist son bref en taunt come il n'avoit disseisour et tenaunt en soun bref, en taunt ne deyt il estre barré quant il ad tenaunt et disseisour etc., et del boure q'il ad etc. jugement etc.

*Hervi.* Pur ceo qe vous ne poet dedire qe vous ne portastes bref vers mesme cesti q'ore est nommé, ou trové fust q'il ne vous disseisi point etc., ne vous ne poez moustrer qe title de fraunk tenement vous seyt puis acreu, par qei agarde la court qe vous ne preignet rien par vostre bref, eynz etc.<sup>3</sup>

##### II.<sup>4</sup>

William de Esthalle et Ele sa femme porterent une assise de novele disseisine vers J. de Penebrige et Alice sa femme et plusors autrez etc. et se pleynt estre disseisi d'une carué de terre etc.

J. et Alice r[espondirent] com tenaunt et disoient qe assise ne deit estre, qar il diseynt qe les avauntbiz W. et Ele autrefeze porteront une assise de novele disseisine vers meme ceaux J. et Alice et vers

<sup>1</sup> Text from *A*: compared with *D*, *T*. Headnote from *A*. <sup>2</sup> *Ins.* en *T*.  
<sup>3</sup> Vide tiel matere anno xlvj. mez nient ajuge etc. Note in *T*. <sup>4</sup> Text from *R*.



poor woman; and [yet] she could not be helped, [though] if she had omitted the woman guilty of felony, her writ would have been good. He had left out this John because he was never seised of the tenements.

*Herle.* What say you to the deed of John your ancestor?

*Denom.* His deed ought not to hurt us, for he is bastard. Ready etc.

Issue joined.

#### 4. ESTHALLE *v.* PENBRIDGE.

An assize of novel disseisin is abated by the plea that the defendant was acquitted by verdict of a previous assize, albeit the plaintiff alleges that, by the addition of other defendants, he now has disseisor and tenant.

##### I.

A writ of novel disseisin is brought against two. One of them answers and says that an assize there ought not to be, because formerly the same plaintiff brought an assize of novel disseisin against us for the same tenements, and he was answered that we did not disseise etc., and this was found by verdict of the assize. We demand judgment whether there ought to be an assize unless he shows some title from a later time.

*Denom.* Although on a former occasion he mistook his writ, insomuch that he had not a disseisor and a tenant in his writ, still he shall not for that cause be barred when he has disseisor and tenant; and since he has them now, judgment etc.

STANTON, J. As you cannot deny that you brought a writ against this same person who now is named, and it was then found that he did not disseise you etc., and you cannot show that title of freehold has since then accrued to you, therefore the Court awards that you take nothing by your writ, but [be in mercy].

##### II.

William of Esthalle and Ela his wife brought an assize of novel disseisin against J. of Penbridge and Alice his wife and divers others, and complained that they were disseised of a carucate of land.

J. and Alice answered as tenant and said that an assize there ought not to be, for they said that formerly William and Ela brought an assize of novel disseisin against them and others for the same

autres de mesme les tenemenz mis ore en vewe et en pleynte; l'assise agardé et prise par lour defaute, ou trové fut q'il n'aveynt fet nul tort etc.; par qey agardé fust q'il ne pristerent rienz par l'assise eynz furent etc. Et demaundoms jugement de l'oure qe nous passames autrefeze quites par jugement qe se fit sur verdit de assise, le qel esta en sa force, si assise sur assise entre mesme les persones de mesme les tenemenz deyve estre.

*Wilby.* Pass[erent] quites en assise qe le pleintif ne fut unqes seisi etc. ou pur ceo qe le bref s'abati pur ceo q'il n'avoit pas disseisour nomement<sup>1</sup> auxi com en le cas ou nous sumes ore? Dount de l'oure qe l'assise ne passa poynt sur le gros de nostre actioun eynz sur le dilatorie, et nous avoms porté nostre bref vers tenaunt et disseisour, jugement si de ceste assise par le primer assise nous doivent barrer.

Et sur ceo furent les partiez ajornez en bank.

*Hervi* recorda le procès etc. et dit qe si assise fut pris a ceste bref ele purreit dire le contrarie del primer assise, et ensi une assise defet par une autre, qe serreit contrarie a ley; et ceste assise porté de mesme les tenemenz et entre mesme les persones etc. coment qe illi seit autre nomée en ceste assise etc.; si agarde la court q'il ne prengne rienz par son bref etc.

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 36d, Glouc.

Heretofore at Gloucester before Henry Spigurnel and Miles of Rodberewe, justices assigned to take assizes in the county of Gloucester on [July 28, 1310] Tuesday next after the feast of St. James the Apostle in A.R. 4; an assize came to find whether John de Penebrugge and Alice his wife, John le Soor, William of Hameldene, Thomas Page, William Vaillant, Adam Avenel, Richard of Warrewyke, John of Freyne, William of Cumpston, and Gilbert le Sage unlawfully etc. disseised Ela, wife of William of Esthalle, of her free tenement in Alurintone<sup>2</sup> by Bibury after the first etc. And thereupon William and Ela by Henry of Optone, Ela's attorney, complained that they disseised her of sixteen messuages and nine virgates etc.

And John of Penebrugge and Alice his wife came. And John le Soor was dead; therefore etc. And William de Hameldene and the others did not come, and they were not attached, for they were not found. Therefore be the assize taken against them by default.

And John of Penebrugge and Alice answered as tenants, and said that there ought not to be an assize between them; for they said that William of Esthalle and Ela his wife heretofore in the King's Court before the said

<sup>1</sup> The place at which this word should occur is not quite certain.      <sup>2</sup> Mod. Arlington.\*

tenements which are now put in view and in plaint, and that the assize was awarded and taken for their default, and that it was found that they had done no tort, therefore it was awarded that [the plaintiffs] took nothing by the assize, but [were in mercy.] And [said they], since formerly we went quit by judgment made upon the verdict of an assize, which [judgment] still stands in its force, we pray judgment whether there should be assize upon assize between the same persons for the same tenements.

*Willoughby.* Why did they go quit in the assize: because the plaintiff was never seised etc., or because the writ was abated since there was no disseisor there named, as there is in the present case? So as the assize did not pass upon the main point of our action, but upon a dilatory, and we have brought our writ against tenant and disseisor, [we pray] judgment whether they ought to bar us from this assize by the former assize.

And on this point the parties were adjourned into the Bench.

STANTON, J., recorded the process etc. and said that if an assize were taken on this writ, it might contradict the former assize, and so one assize would be defeated by another, which is contrary to law; and this assize is brought for the same tenements and between the same persons, albeit there are other persons named in this assize. Therefore this Court awards that he take nothing by his writ etc.

**Note from the Record** (*continued*).

justices there, to wit on [Dec. 29, 1309] Monday the feast of St. Thomas the Martyr in A.R. 3, brought a similar assize against John of Penebrugge and Alice his wife and others for the same tenements, by which assize it was then and there found that John and Alice did not disseise Ela, wife of William of Esthalle, as William and Ela complained; and therefore it was awarded that John and Alice should retire thence without day; and whereas by the judgment of the same Court they were then acquitted of a disseisin, they pray judgment whether this assize ought again to proceed between them for the same tenements, unless William and Ela can show that freehold in the same tenements has somehow accrued to them by a later seisin.

And William and Ela confessed that theretofore they arraigned the said assize against John and Alice for the said tenements as aforesaid, and because no disseisor was named in their writ, John and Alice retired quit by the recognition of the assize and judgment etc.; and they said that in this writ which they have newly brought against John and Alice and others, disseisors are named, who were not party in the former writ nor named therein; and they prayed judgment whether the assize should be delayed etc. (*Note continued on next page.*)

Note from the Record (*continued*).

A day was given them to hear their judgment on this day, to wit, the octave of St. Michael.

And now come as well William and Ela, by the attorney of Ela, as John and Alice in proper person. And because William and Ela confessed that they heretofore arraigned a similar writ of novel disseisin against John and

5. ADAM *v.* BOYLAND.

Juree de *utrum* ou il demanda jugement si juree sour juree etc. ou l'atour dit q'il ne pout avoyr eyde de patron ne de evesqe etc.

*Iurata* de *utrum* ou dit fut qe le tenant recoveri mesmes les tenemenz par autiel bref; mès le patron et le evesqe ne furent pas parties en le premer bref.

I.<sup>1</sup>

Richard de Boylaund persone de la eglise de Thorpe porta un juree de *utrum* vers Johan persone del eglise de Sahingham,<sup>2</sup> et pria qe reconu fust si taunt etc. fussent fraunche almoigne de sa eglise.

*Hunt.* La jurette ne deit estre, qe aultrefoitz portames un bref de *utrum* vers vous mesmes tali die et tali loco et anno etc. devaunt etc. ou vous venistes et pledastes ove nous et distes<sup>3</sup> qe lez tenemenz furent de fraunche etc. de vostre eglise, par qei la jurette fust agardé et prise, par quele jurette trové fust qe lez tenemenz sont de<sup>4</sup> fraunche almoigne de nostre eglise, par ount fust agardé qe nous recoverassoms; par qei nous demaundoms jugement si juree sur juree deyve estre.

*Herle.* Eynz ceo qe vous nous<sup>5</sup> devez de la jurette barrer il covent qe vous moustret qe la jurette passa en sa nature et qe le jugement soit fynal; mez fynal ne poet le jugement estre si le patron et l'evesqe ne feussent partie etc., et desicome il ne purra poynt eyde de eaux avoyr par ount il pount<sup>6</sup> estre partie al jugement, n'entendoms mye qe par nul tiel jugement ou etc. ne furent mye partie nous pousset de la jurette barrer.<sup>7</sup>

*Denom.* Si vous eussez a cel heure fait defaute par qei la jurette eust esté agardé et prise par vostre defaute et jugement doné etc., le jugement serra final, et si ne sont mye le patron et l'evesqe partie. Sic ex parte ista.

<sup>1</sup> Text from *A*: compared with *D*, *T*. Headnotes from *A* and *D*. <sup>2</sup> de sa Hingham *A*; de sa Hingham *D*, *T*. <sup>3</sup> deistes *D*, *T*. <sup>4</sup> le *D*, *T*. <sup>5</sup> ne *A*; nous *D*, *T*. <sup>6</sup> poet *D*. <sup>7</sup> barre *A*.



Note from the Record (*continued*).

Alice for the said tenements etc., on which writ John and Alice retired quit by the judgment of the Court etc. as aforesaid, it is awarded that John and Alice go thence for the present without day, and that William and Ela take nothing by this writ, but be in mercy for their false claim etc.

5. ADAM *v.* BOYLAND.

In a *iurata utrum* between two parsons the tenant did not pray aid of patron and ordinary. The demandant recovered upon a verdict given for him. This recovery will not be a bar to another *iurata utrum* brought by the successor of the loser against the recoveror.

## I.

Richard of Boyland,<sup>1</sup> parson of the church of Thorpe, brought a *iurata utrum* against John, parson of the church of Sahingham, and prayed that it might be inquired whether [certain tenements] were the frank-almoin of his church.

*Huntingdon.* A jury there ought not to be, for formerly we brought a writ of *utrum* against yourself<sup>2</sup> on such a day, in such a place and year, before so-and-so, and you came and pleaded with us and said that the tenements were of the frank-[almoin] of your church, wherefore the jury was awarded and taken, and thereby it was found that the tenements are of the frank-almoin of our church, and therefore it was awarded that we should recover. So we pray judgment whether there should be jury upon jury.

*Herle.* Before you ought to bar us from the jury, it behoves you to show that the jury passed in its nature,<sup>3</sup> and that the judgment is final. But final it cannot be, unless the patron and bishop were party; and, since he cannot have aid of them so that they could be party to the judgment, we do not think that any such judgment to which [patron and bishop] were not party can bar us from the jury.

*Denom.* If you had now made default, and for that cause this jury were awarded and taken by your default, and judgment were given, the judgment would be final, and yet the patron and bishop are not party. So in this case.

<sup>1</sup> For the right names see our note from the record.

<sup>2</sup> The action was against the present demandant's predecessor. See our

note from the record.

<sup>3</sup> That is to say, that the jury gave a verdict on the question formulated in the original writ.

*Herle.* Un est gaunt la choce passe en sa nature etc., aultre est gaunt homme entrelest<sup>1</sup> ceo qe valer luy peusse en pledaunt, qe possible est qe si l'evesqe et le patron eussent esté partie il poeint avoir barré etc. par le relees ou quiteclamaunce; par qei etc. Et d'aultre-part *posito* qe la persone se oblige<sup>2</sup> en un annueté par soun fait demene sauntz fait de patron et d'evesqe, la eglise ne serra par taunt chargé; nyent plus ex parte ista, depuis qe lay suppose qe l'evesqe et le patron deivent estre partie<sup>3</sup> en eyde einz ceo qe la eglise deyve estre barré, n'entendoms mye qe par<sup>4</sup> tiel jugement, a qei il ne furent point partie, nous pousse de ceste juree barrer.

*Ber.* Un est gaunt homme est eynz entrebotaunt<sup>5</sup> la partie etc., aultre est gaunt il est hors par voie d'accioun.

## II.<sup>6</sup>

A.<sup>7</sup> persone de l'eglise de S. porta son bref vers W. persone de l'eglise de C. et pria qe reconu etc. par la juree la quel etc. soit fraunche aumoyne apendaunt a l'eglise cely A. de S. ou etc. a l'eglise W. de C.

*Hunt.* Autrefeze portames nous mesmes une juree de *utrum* de mesmes les tenemenz vers R. vostre predecessour *coram iusticiariis* etc.; qel juree passa en sa nature; par quele fut trové qe ceux tenemenz furent le fraunche amoyne de nostre eglise de C.; par qey nous recoverames par jugement, qe esta uncore en sa force. Jugement si juree sur juree deyve estre, ceo qe serreit defere l'un par l'autre.<sup>8</sup>

*Migg.* C'est un bref de droit doné a persone de seyn<sup>9</sup> eglise en leu de toux autrez brefs, par quel bref le droit de nule eglise ne put estre trié sanz ceaux en<sup>10</sup> qy le droit demurt, c'est a savoir le ordiner et le patroun.<sup>11</sup> Et n'entendoms pas qe sanz ceo q'il pusse dire qe ceux furent partiz a cele juree ou prié en cyde et par agarde severés, qe nous devons estre barrez de la juree.

*Ber.* Grauntez donqe qe la juree passa en sa nature et pus pledez a cele costé. (Et les chasa a ceo fere.)

*Herle.* Nous ne poums dedire. (Et dit com avaunt.) Mès ordiner ne patroun<sup>12</sup> ne furent poynt partie ne prié en eyde. Jugement etc.

*Berr.* Vous avetz conu qe la juree passa en sa nature ou trové

<sup>1</sup> entrelesse *D.*

<sup>2</sup> obliga *D.*

<sup>3</sup> prie *D, T.*

<sup>4</sup> par my *D.*

<sup>5</sup> en

rebotaunt *D, T.*

<sup>6</sup> Text from *R*: compared with *M, P.*

<sup>7</sup> Nichol *P.*

<sup>8</sup> sur juree etc. *M.*

<sup>9</sup> seynt *M, P.*

<sup>10</sup> ove *M.*

<sup>11</sup> priour *M.*

<sup>12</sup> ne le

priour *M.*

*Herle.* It is one affair when the [jury] passes in its nature, and another where a man omits in pleading something that might avail him, for it is possible that if the bishop and patron had been party, they could have barred [the then demandant] by a release or quitclaim. Wherefore etc. Moreover, put case that a parson binds himself in an annuity by his own deed without the deed of patron and bishop, the church will not thereby be charged. No more in this case, since the law supposes that bishop and patron ought to be [prayed] in aid before the church can be barred. So we do not think that by such a judgment, to which they were not party, he can bar us from this jury.

BEREFORD, C.J. It is one case when a man is 'in' and rebutting [a demandant], and another when he is 'out' and bringing an action.

## II.

A., parson of the church of S., brought his writ against W., parson of the church of C., and prayed that it be inquired by the jury whether [the tenements] are frank-almoyn of A.'s church of S. or [frank-almoyn of] W.'s church of C.

*Huntingdon.* Before now we ourselves brought a jury *utrum* for the same tenements against R., your predecessor, before the justices etc., and that jury passed in its nature, and thereby it was found that these tenements were frank-almoyn of our church of C.; wherefore we recovered by a judgment which still stands in its force. Judgment, whether there should be jury upon jury, for the result might be that one would defeat the other.

*Miggeley.* This is a writ of right given to a parson of holy church in lieu of all other writs; and by this writ the right of no church can be tried without those in whom the right rests—namely, the ordinary and the patron. And we do not think that we ought to be barred from this jury unless he can say that they were parties to that [previous] jury or prayed in aid and severed by judgment.

BEREFORD, C.J. Then admit that the jury passed in its own nature, and afterwards plead to the point you mention. (He drove them to this.)

*Herle.* We cannot deny etc. (Repeating what he had said.) But ordinary and patron were not party, nor were they prayed in aid. Judgment.

BEREFORD, C.J. You have admitted that the jury passed in its own nature, and that the verdict was etc. So, if the Court did you

fut etc. Dount si la court vous fit tort, ceo ne put estre redressé par ceo bref,<sup>1</sup> eynz par autre voie.

*Herle.* Nous feimes venir le recorde devaunt le Roy, ou avis fut a son conseil qe les justices n'aveynt poynt erré, pur ceo qe la court ne fet nul homme venir s'il ne seit partie au bref ou vouché ou la partie le priast en eyde, qe autre juree girreit<sup>2</sup> en ceo cas, et autrement serreit duresse.<sup>3</sup> Et<sup>4</sup> put estre si le patroun et le ordinare ussent esté somouns etc. eux poreient avoir barré la partie d'actioun; ou par cas<sup>5</sup> par collusioun entre les deux persones la juree passa. Item si une annuité seit<sup>6</sup> demaundé vers persone et il r[espoigne] seul saunz prier eyde, tot seit ele vers ly dereyné,<sup>7</sup> ceo ne grevera poynt a son successour<sup>8</sup> q'il ne put recoverer etc. et descharger sa esglise etc. Auxi par de sa.

*Berr.* Mostrez nous qe vous faites venir le recorde devaunt le Roy<sup>9</sup> et qe en tiele manere vous futes r[espondu].

Et sic commorantur etc.<sup>10</sup>

### III.<sup>11</sup>

Jon persone dil esglise Nostre Dame de Thorpe porta soun bref de *utrum* vers Richard de B. persone del esglise de D., et pria qe reconu fust par la juree le quel les tenemenz contenuz en le bref soit franche amoigne dil esglise de Nostre Dame de Thorpe ou franche almoigne etc.

*Hunt.* La juree ne doit estre, qe nous vous dyoms q'un J. vostre predecessour porta autiel bref autrefoithe devaunt Sire Jon de Mutforde de mesme les tenemenz, ou la juree passa entre nous. Par vertue de la quele juree trové fuit qe les tenemenz furent la franche almoigne nostre esglise. Par quei nous recoverames par jugement; le quel esta unqore en sa force nyent defait. Jugement si juree sour<sup>12</sup> juree doyve estre.

*Migg.* C'est un bref de droit et autre bref ne puse avoir en ceo cas. Mès a ceo qe le droit de nostre esglise duist estre esteint a touz jours par la juree, si covendreit eide avoir del patron et del ordiner. Mès vous dioms qe eux ne furent mie prietz, n'appellez en aide, ne ne furent mie a cel juree, qar sanz eux ne puist la esglise perdre. Et

<sup>1</sup> End of speech *M*, *P*. <sup>2</sup> eyde et qe autre juree et err' *M*. <sup>3</sup> eyde. Et si ceti juree ne passe il ensiwereyt graunt duresse *P*. <sup>4</sup> serreit dure qe *M*. <sup>5</sup> la partie de sute en cas *M*. <sup>6</sup> si tenemenz soyent *P*. <sup>7</sup> dereyn et *R*. <sup>8</sup> suyte *M*. <sup>9</sup> coram rege *M*. <sup>10</sup> Et sic remanent *M*; Et sic fecerunt *P*. <sup>11</sup> Text from *B*. <sup>12</sup> sou *B*.



wrong, that must be redressed, not in this writ, but in some other way.

*Herle.* We caused the record to come before the King;<sup>1</sup> and his Council was of opinion that the justices had not erred, for the Court will cause no man to appear unless he be party to the writ, or a vouchee, or prayed in aid by the party; and so [the Council opined] that another jury would lie in this case, and otherwise there would be hardship.<sup>2</sup> And perhaps if patron and ordinary had been summoned, they might have barred the [other] party from his action; or it may be that the jury passed by collusion between the two parsons. Moreover, if an annuity be demanded against a parson, and he answers alone and without praying aid, although the annuity be deraigned against him, that will not burden his successor or prevent him from recovering and discharging his church. So in this case.

BEREFORD, C.J. Show us that you caused the record to come before the King, and that you were answered in manner aforesaid.

And so the case stands.<sup>3</sup>

### III.<sup>4</sup>

John, parson of the church of Our Lady of Thorpe, brought his writ of *utrum* against Richard of B., parson of the church of D., and prayed that it be inquired of the jury whether the tenements contained in the writ are the frank-almoyn of the church of Our Lady of Thorpe or the frank-almoyn etc.

*Huntingdon.* A jury there ought not to be, for we tell you that one J., your predecessor,<sup>5</sup> formerly brought a similar writ before Sir John de Mutford for the same tenements, and that the jury passed between us. And by virtue of this jury it was found that the tenements were the frank-almoyn of our church. And therefore we recovered by a judgment; and that judgment still stands in its force and not undone. Judgment whether there should be jury upon jury.

*Miggeley.* This is a writ of right, and other writ can [we] not have in this case. But in order that the right of our church should be extinguished for ever by the jury, it behoved that aid should be had of patron and ordinary. But we tell you that they were not party to that jury nor prayed in aid, [and] without them the church cannot

<sup>1</sup> These proceedings in error are not mentioned in the first report.

<sup>2</sup> Observe some small differences between the books.

<sup>3</sup> One book says, 'And so they did.'

<sup>4</sup> This report is in the Old Edition, p. 87.

<sup>5</sup> No, the action was against the present demandant's predecessor. See our note from the record,

desicome il ne furent mie a cel juree, jugement si la juree a ore ne doyve estre.

*Ber.* Si erreur soit en ceo procees, quidetz vous atteindre a la juree avaunt qe cel procees, si errour y soit, soit redressé ?

*Herle.* Sire, oil, qar ceo ne fuist mie errour de court, mès de sa defaute demene, qar la court ne purra mie destreindre a prier aide de eux s'ils ne vousissent de gree. Estre ceo si la persone eust dereigné vers nostre predecessour un anuité de x. souz par agard de ceste court ou nostre predecessour pleda sanz <sup>1</sup> ceo qe le patroun ou l'evesqe deussent avoir pledé avant q'il <sup>2</sup> furent demandez ou appelez en aide, *non obstante* cel jugement liereit a nous a detenir cel anuité. Sic ex parte ista.

*Toud.* Nostre predecessour siwit un record en baunc le Roi etc. pur redresser cel tort. Et pur ceo qe errour de court ne fuist pas trové, mès defaute de partie, avis fuist a les justices et au conseil qe soun successeur pout user la juree precedente. Par quei il ne voilleient la defaute redresser, mès dist lour fuist q'ils siwissent la juree derichiefe. Et de ceo vouchoms recorde etc.

*Ber.* Fetes <sup>3</sup> venir le record et nous aviseroms.

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 111, Norf.

A jury comes to find whether twenty-four acres of land with the appurtenances in Saxlyngham next Hemenhale be frankalmoin belonging to the church of B. Mary in Nethergate de Saxlingham next Hemenhale, whereof John Adam is parson, or frankalmoin belonging to the church of Richard of Boiland, parson of the church of B. Mary in Thorpe de Saxlingham next Hemenhale.<sup>4</sup> And thereupon John says that one Ralph of Swantone, sometime parson of the church of B. Mary in Nethergate de Saxlingham, predecessor etc., was seised as of the right of his said church in time of peace, in the time of Edward [I.] etc., who in the same time alienated these tenements etc.

And be it known that William de Carliolo patron of the church of B. Mary in Thorpe, whom Richard prayed in aid, had a day by his essoiner here at this day after he was summoned etc. And now he comes not. And John, Bishop of Norwich, diocesan of that place, without whom etc., aforetime, to wit, in three weeks from Easter last, made default here after he was summoned etc. Therefore let Richard answer without [them].

And Richard says that this jury ought not to proceed between them ; for he says that aforetime in the court of Edward [I.] before John of

<sup>1</sup> A word erased; sanz *Conj.* <sup>2</sup> deussent . . . qil *written in the margin and partially caught in the binding, B.* <sup>3</sup> Fit B. <sup>4</sup> Saxlingham Nethergate and Saxlingham Thorpe are two villages near Hempnall.

lose. We pray judgment whether there ought not now to be a jury, as they were not [present] at the [other] jury.

BEREFORD, C.J. If there be error in this process, do you think to get to<sup>1</sup> a jury before the error, if any there be, is redressed?

Herle. Yes, Sir, for that was not an error of the Court, but was due to his own default, for the Court could not constrain him to pray aid of [patron and ordinary] if he did not wish it. Besides, if the [other] parson has deraigned an annuity of ten shillings against our predecessor by award of this Court in a case in which our predecessor pleaded without calling the patron and ordinary or praying them in aid,<sup>2</sup> then, despite the judgment, it would be lawful for us to detain that annuity. So in this case.

Toudeby. Our predecessor sued a *recordari* in the King's Bench etc. to redress this wrong. And because no error of the Court was found, but only a default by the party, the justices and Council were of opinion that his successor could use a [jury upon the] preceding jury.<sup>3</sup> So they would not redress the wrong, but told the party to sue a jury over again. And for this we vouch the record.

BEREFORD, C.J. Cause the record to come, and we will be advised of this matter.

**Note from the Record** (*continued*).

Metingham and his fellows, justices of the same king here, in A.R. 22 [A.D. 1293-4], he brought a like writ of *iurata utrum* against Ralph of Swantone, then parson of the church of B. Mary in Nethergate, predecessor of John, for the said tenements, and prayed that a recognition be made whether (*utrum*) they were frankalmoin belonging to Richard's church or frankalmoin belonging to Ralph's church, in such wise that both he [Richard] and Ralph put themselves thereof on that jury; and by the same it was found (*convictum*) that the tenements were frankalmoin belonging to Richard's church, and not frankalmoin belonging to Ralph's church; and thereby Richard then recovered the tenements against Ralph etc. by final judgment upon verdict of the said jury, which judgment still stands in its force; and thereupon he prays judgment whether in this case there ought to be jury upon jury etc.

And John cannot deny that the said jury sometime passed (*transiit*) in the court of [Edward I.] etc. between Richard and Ralph for the tenements in form aforesaid; but he says that this ought not to withstand him in this behalf in such wise that this jury ought not at present to proceed between him and Richard etc., for Ralph, John's predecessor, in contravention of the course of law (*iuris ordine pretermisso*), put himself upon the said jury

<sup>1</sup> We take the *atteindre* to mean to attain, not to attain.

<sup>2</sup> The text at this point seems faulty.

<sup>3</sup> Or perhaps, with a correction of the text, 'could use the present jury.'

Note from the Record (*continued*).

without praying aid of the patron of his church or of the diocesan bishop of that place as is the custom (*prout moris est*) in suchlike pleas—which had he done, the patron and bishop by their answer might have set up some obstacle by reason of which the jury ought not then to have proceeded; and therefore he says that Ralph by his negligence lost the tenements etc., which negligence should rather be accounted (*scenseri*) an alienation by Ralph than a final judgment etc. Also he says that after Ralph's death, and after John was parson imparsoner in the church of B. Mary in Nethergate, he [John] caused the record and process of the said jury, had between Richard and Ralph, to come before Roger le Brabanzon and his fellows, justices [assigned to hold] the pleas of King Edward [I.],<sup>1</sup> to correct the errors, if any should be found therein, and to revoke and annul the judgment thereupon rendered, assigning that John of Mettingham and his fellows had made error in that they proceeded to the taking of the jury and the rendering of judgment without aid having been prayed of the said patron and diocesan; and the said justices [assigned to hold] the King's pleas, notwithstanding the said reason, approved and decreed good the said record and process so far as concerned the action of the justices; but by the counsel of that court<sup>2</sup> etc. it was said to John that, notwithstanding the said judgment, he should purchase for himself anew the said *iurata utrum* etc.; and thereupon he prays judgment etc., and that the jury may proceed between them etc. (*Note continued on opposite page.*)

6. MANERS *v.* RANDOLF.

Forme de doun, ou piert qe home put user ceo bref de la seisine  
soun auncestre en temps le Roy Henri.

*De forma donacionis* en le *descendere* ou il conterent etc. en temps  
le Roi H[enri]; et fust chalengé; et pus la weiva et voucha a garaunt etc.

I.<sup>3</sup>

Robert de Maners porta son bref de fourme de doun en le *descendere* vers Johan Randolf et Johane sa femme, et demaunda etc., countaunt q'un Richard le fitz Piers fust seisi et dona a Johan de Maners et Alice sa femme en fraunc mariage, par quel doun Johan et Alice furent seisi en temps le Roy H[enri]; de Johan etc. *descendy* a Robert q'ore demaunde com a fitz.

*Toud.* Ceo bref est doné par le statut fait en temps<sup>4</sup> le Roy E[dward], et vous avez counté de la seisine vostre auncestre en temps

<sup>1</sup> Error from C. B. to B. R.      <sup>2</sup> *Ex consilio illius curie*. The Court gave advice rather than judgment.      <sup>3</sup> Text from A; compared with D, T. Headnotes from A and D.      <sup>4</sup> *Rep.* en temps A.



Note from the Record (*continued*).

A day is given them to hear their judgment on the octave of St. Hilary, saving to the parties their reasons to be advanced on either side etc. And the said jury is put in respite to the said term for default of jurors, since none of them has come.

[Adjournments to a month from Easter, quindene of St. Hilary, quindene of Trinity, morrow of Martinmas, three weeks from Easter, quindene of Michaelmas.]

Afterwards at that day came John Adam, by Adam of Brom his attorney, and offered himself on the fourth day against Richard of the said plea. And he came not, and he had a day, as appears above. Therefore it is awarded that the jury be taken against him by his default. But it is put in respite until the octave of the Purification at the prayer of the demandant, for default of jurors, for none has come. Therefore let the sheriff have their bodies etc.

Afterwards on the octave of St. John Baptist in A.R. 7 [A.D. 1314] comes John Adam in proper person; and the jurors come. And they say upon their oath that the tenements are frankalmoin belonging to the church of B. Mary in Nethergate, whereof John Adam is parson, and not frankalmoin belonging to the church of B. Mary of Thorpe, whereof Richard is parson.

Therefore it is awarded that John Adam recover his seisin against Richard by the view of the recognitors, and be Richard in mercy.

6. MANERS *v.* RANDOLF.

The Statute *de donis* extends to estates tail created before the Statute, if before the Statute there was no alienation.

A voucher under a fine is allowed, though it is alleged that the vouchee will vouch the voucher and so delay the action.

## I.

Robert de Maners brought his writ of formedon in the descender against John Randolf and Joan his wife and demanded etc., counting that one Richard son of Piers was seised and gave to John de Maners and Alice his wife in frank-marriage; and that by this gift John and Alice were seised in the time of King Henry [III.]; and from John [the right] descended to Robert the demandant as son.

*Toudeby.* This writ is given by the Statute made in the time of King Edward,<sup>1</sup> and you have counted of the seisin of your ancestor in

<sup>1</sup> Stat. Westm. II. c. 1.

le Roy H[enri], le quel counte n'est pas garraunti<sup>1</sup> par le bref. Jugement si a tiel counte devez estre r[espondu].

*Scrop.* Volez ceo pur r[espouns] ?

*Toud.* Nous le voloms au counte.

*Scrop.* Coment qe vous le mettez au counte, c'est al accioun. Par qei nous voloms enparler. (Et revient et dit.) Sire, la ou il dient qe nostre counte n'est mye garraunti<sup>2</sup> etc., Sire, nous entendoms qe le statut se estente auxi bien a<sup>3</sup> dounz faitz avaunt statut com après si les tenemenz ne seyent alienez avaunt statut. Et del heure qu'il ne poient dedire la fourme et la seisine nostre auncestre *ut supra* ne<sup>4</sup> il ne dient qe lez tenemenz furent alienez avaunt statut, jugement, et prioms seisine de terre.

Et puis *Toud.* wayva sa premir excepcioun et voucha a garraunt.

## II.<sup>5</sup>

Robert<sup>6</sup> Maners porta son bref vers Robert Bardolfe<sup>7</sup> et sa femme, et counta qe un S., qe fut seisi etc., dona a Jon son pere en franc mariage ov Alice sa file ; par qel doun il furent seisis etc. ; et le quex après la mort etc. a ly deyvent descendre etc.

*Westoc.* Il ne deit a tiel counte<sup>8</sup> estre r[espondu], qar son bref ly est doné par statut fait en temps le Roi E[dward], et il ad counté en temps le Roi H[enri] avaunt qe tiel<sup>9</sup> bref fut ordiné en le descendre, et demaundoms jugement.<sup>10</sup>

*Herle.* Ceo est al actioun, dount si vous le volet pur r[espouns], nous r[espondrons] asset.

*Toud.* Vous pernetz vostre title de un droit taillé en temps le Roi H[enri], et il n'i avoit nulle forme taillé avaunt statut.

*Ber.* Si avaunt statut<sup>11</sup> c. anz.

*Toud.* Mès en tiel forme<sup>12</sup> nul recoverer ne fut doné qe en le remayndre ou en le *reverti*.

*Berr.* Ceo est autre.

*Toud.* Avaunt statut fut tiele taille fee simple en les persouns le fitz<sup>13</sup> etc., et nul bref fut ordiné pur les fitz pur le alienaciouns le<sup>14</sup> feffez en la taille. Et il ad de seisine avaunt statut pris son title,

<sup>1</sup> garrauntie *D.*    <sup>2</sup> garraunt *A.*    <sup>3</sup> as *D.*    <sup>4</sup> *Om.* ne *A.* ; *ins.* *D.*, *T.*  
<sup>5</sup> Text from *R.* : compared with *M.*, *P.*    <sup>6</sup> *Ins.* de *M.*, *P.*    <sup>7</sup> Gardolfe *M.* ; Baldok' *P.*    <sup>8</sup> bref *P.*    <sup>9</sup> qen tiel cas *M.*    <sup>10</sup> *Om.* next six specches *P.*    <sup>11</sup> *Om.* *Ber.*    <sup>12</sup> *Om.* *Toud.* . . . forme *R.* ; *ins.* *M.*    <sup>13</sup> le feffe *M.*    <sup>14</sup> ordeine en le cas par les alienaciouns faitz par les *M.*

the time of King Henry, so the count is not warranted by the writ. Judgment, whether to such a count you ought to be answered.

*Scrope.* Is that to be your answer ?

*Toud.* We plead it to the count.

*Scrope.* Although you plead it to the count it goes to the action. So we will imparl. (He came back and said :) Sir, whereas they say that our count is not warranted [by the writ], we hold that the Statute extends as well to gifts made before the Statute as to those made afterwards if the tenements are not alienated before the Statute. And we pray judgment and seisin of the land, since they cannot deny the form [of the gift] and the seisin of our ancestor *ut supra*, and do not say that the tenements were alienated before the Statute.

Afterwards Toudeby waived his first plea and vouched to warrant.

## II.

Robert Maners brought his writ against Robert Bardolf and his wife and counted that one S., who was seised, gave the tenements to John [the demandant's] father in frank-marriage with Alice his daughter; and that by this gift they were seised; and that after their death the tenements ought to descend to him etc.

*Westcote.* He ought not to be answered to such a count, for his writ is given him by a Statute<sup>1</sup> made in the time of King Edward; and he has counted of the time of King Henry, when no such writ in the descender was ordained. So we pray judgment.

*Herle.* That goes to the action, so if you wish it to be your answer, we will give answer enough.

*Toudeby.* You take your title from a right 'tailed' in the time of King Henry, and there was no 'tailed form' before the Statute.

BEREFORD, C.J. Yes [there was], a hundred years before the Statute.

*Toudeby.* But in the case of such a form there was no recovery given save in the remainder or reverter.

BEREFORD, C.J. That is a different matter.

*Toudeby.* Before the Statute such a 'tail' was fee simple in the person of the son etc.;<sup>2</sup> and no writ was ordained for the sons on alienation by the feoffees in tail. And he has taken his title from a

<sup>1</sup> Stat. Westm. II. c. 1. The statute expressly says that it does not extend to gifts made before the statute. But the 'gifts' of this clause was construed to

mean the alienations by tenant in tail. See Second Inst. 356.

<sup>2</sup> One book says 'of the feoffee.'

en quel temps il n'i avoit mye actioun. Et demaundoms jugement si a tiel<sup>1</sup> devet estre r[espondu].

*Herle.* Coment qe vous la<sup>2</sup> pernez au counte, vostre excepcioun est a nostre actioun.

*Berr.* Coment qe il la voudra prendre, il covent qe la court entend<sup>3</sup> solum la ley et solum la force.<sup>4</sup>

*Herle.* Depus qe la court entent ensi<sup>5</sup> nous emparleroms. (Et sic fecit.)<sup>6</sup>

Et hic dubitarunt aliqui, credentes<sup>7</sup> quod *Toud.* non debuit resortiri ad aliam r[esponsionem]. Et com après l'enparler :<sup>8</sup>

*Scrop.* Nous avoms dit qe S. fuit seisi et dona a J. nostre piere etc. en fraunc mariage etc., et qe eux par cele doun furent seisi, et qe après lour mort etc., et eux ne dedient pas la forme ne dedient qe de<sup>9</sup> ceo avaunt statut ne<sup>10</sup> fut fet alienacioun. Dount la taille demurt de ceux tenemenz auxi comme des tenemenz donés par taille en fraunc mariage etc. pus statut. Et demaundoms jugement et prioms seisine de terre.

E par cele r[esoun] furent il ostés de lour exceptioun.

*Westoc.* De une carué<sup>11</sup> de terre compris deins le manoir<sup>12</sup> etc. Robert mesme est soul tenaunt a terme de sa vie du lees etc. et vouche etc. Endreit du remenaunt Robert et sa femme sount tenauntz solom la forme de ceste fyn a eux et a lour heirs de lour deux corps engendrez ; dount par mesme la fyn la revercioun est a Sir J. de Brok'<sup>13</sup> Evesqe de Bathe et de Welles, et ly vouchoms etc.

*Scrop.* Puis avoms<sup>14</sup> replié a vostre exceptioun qe vous donastes pur r[espouns], et demaundoms jugement etc.

*Berr.* Ne covent pas qe toux les paroles qe homme die portent fees,<sup>15</sup> ne homme ne les put poynt toux charger.<sup>16</sup>

*Herle.* Ceo vouchier n'est forqe a delayer ceo plee, qe par la fyn pert il qe Robert dona ceux tenemenz al Evesqe e ly vouche<sup>17</sup> auxi comme il fet. Dount il semble, de l'oure q'il ne serra<sup>18</sup> plus avaunt en le plè qaunt Robert avera garauntie del Evesqe<sup>19</sup> q'il n'est ore, qe par ceo plee ne deyve le plee targer.<sup>20</sup>

*Berr.* Il covent suffrir le vocher qe tiel c. anz veu.<sup>21</sup>

Et stetit etc.<sup>22</sup>

<sup>1</sup> *Ins.* counte *M.*    <sup>2</sup> *le M.*    <sup>3</sup> *la tient M.*    <sup>4</sup> *Om.* two next paragraphs *P.*  
<sup>5</sup> *issint M.*    <sup>6</sup> *Om.* Et sic fecit *M.*    <sup>7</sup> *Om.* credentes *M.*    <sup>8</sup> Et tamen apres enparler' *M.*  
<sup>9</sup> *Om.* de *M.*    <sup>10</sup> forme qe de ceo eavaunt en *R* ; *text from M.*  
<sup>11</sup> acre *M.*    <sup>12</sup> *Om.* deins le manoir *M.*    <sup>13</sup> Drok' *M.*    <sup>14</sup> Nous avoms *M, P.*  
<sup>15</sup> portement fitiz (?) *M.*    <sup>16</sup> Il ne covent pas qe checune parole dite prenge effect *P.*  
<sup>17</sup> Evesqe dont les esson' le vouch' *M.*    <sup>18</sup> *Ins.* nent *M.*    <sup>19</sup> garr' al esson' *M.*  
<sup>20</sup> plee estre targe *M.*    <sup>21</sup> tiel cent' avez vewe (*end of case*) *M.*  
<sup>22</sup> suffrir ceo vocher et stetit vocatio *P.*



seisin before the Statute, in which time there was no action. We pray judgment whether to such a count he should be answered.

*Herle.* Although you plead it to the count, your plea goes to our action.

BEREFORD, C.J. No matter how he wishes to plead it, the Court must take it<sup>1</sup> according to its force in law.

*Herle.* As that is the Court's view, we will imparl. (And so he did.)

At this point some doubted, thinking that Toudeby ought not to resort to any other answer.<sup>2</sup> After the imparlance—

*Scrope.* We said that S. was seised and gave to J. our father etc. in frank-marriage etc., and that [he and his wife] were seised by the gift, and that after their death [the right descended to us], and they do not deny the form [of the gift] or that no alienation was made before the Statute. So the 'tail' of these tenements remains as if they had been granted in tail in frank-marriage after the Statute. We demand judgment and pray seisin of the land.

For this reason [the tenants] were ousted from their plea.

*Westcote.* As to one carucate of land comprised in the manor etc. Robert himself is sole tenant for term of his life by the lease of etc.; and he vouches etc. As to the rest Robert and his wife are tenants according to the form of this fine to them and the heirs of their bodies begotten, whereof by the same fine the reversion is in Sir J. de Drokenstord, Bishop of Bath and Wells;<sup>3</sup> and we vouch him etc.

*Scrope.* But we replied to your plea which you gave us as an answer, and we pray judgment etc.

BEREFORD, C.J. It is not right that every word that a man says should bear force<sup>4</sup> or that weight should be laid upon it.

*Herle.* This voucher is merely to delay the plea, for by the fine it appears that Robert gave these tenements to the Bishop, and now he is vouching [his own feoffee]. So it seems that this action should not be delayed, since we shall be no further forward in the action when Robert has the Bishop's warranty.

BEREFORD, C.J. You must suffer the voucher. [The like has been] seen these hundred years.<sup>5</sup>

[The voucher] stood.

<sup>1</sup> Or 'the Court understands it.'

<sup>2</sup> Apparently meaning that he should not be allowed to waive the plea that the Statute *de donis* was not applicable.

<sup>3</sup> From 1309 to 1329.

<sup>4</sup> Or 'should bear faith'; or 'should take effect.'

<sup>5</sup> This case may be Fitz. *Counterple de voucher*, 102.

III.<sup>1</sup>

Robert de Maners porta soun bref de fourme de doun vers Johan Randolf et Jone sa femme, et demanda le manoir de Hayetz ove les appointinances, forspris un mees et ij. vergees de terre. Et counta de la seisine un Richard le fuiz P. qe douna l'avauntdit manoir etc. a Johan de Maners en franc mariage ove Katerine sa fille. Mesme cele prist les espleez come en homage en rente en blees en herbages etc. com de fee etc. Et counta de la seisine Jon soun pere en temps le Roi H[enri].

*Toudeby* deffendi etc. et dit qe bref de fourme de doun en le descendre si est douné par statut fait en temps le Roy E[dward] etc., qe avaunt statut n'y avoit nule recoverir. Et il ad counté de la seisine W. en temps le Roy H[enri], en quel temps bref de fourme de doun ne fuist pas ordiné. Par quei nous demandoms jugement si a tiel counte foundu sur tiel bref doyve estre r[espondu].

*West.* Soun bref ne puist mie estre garr[anti] de statut ne garr[ant] a soun counte, q'en cel temps q'il ad counté poeit homme alier meyntenant après l'issue et statut veot 'quod ad alienacionem inposterum faciendum etc.'; et ad dona prius facta non extenditur. Jugement.

*Herle.* Statut sert auxi bien a les dounz faitz avaunt statut come après, la ou les tenemenz ne sount pas alienetz avaunt statut, mays unt continué lour estat par la fourme et aliené puis statut. Pur ceo voillezt vous respondre ?

*Toud.* Si la court voie qe ceo bref puist estre garr[aunt] a ceo counte, nous r[espondroms] assetz.

*Malm.* Depuis q'il ne puist dedire qe l'alienacioun se fist avaunt statut ne autre chose ne veot dire, jugement.

*Toud.* fuist chacé a dire outre. Et voucha a garraunt del tout, forspris un mees et une caruee de terre, J. etc. par vertue d'une fyne, qe voilloit qe Jon Randolf avoit conu le droit a J. come ceo q'il avoit de soun doun, et Jon graunta et rendist a J. Randolf et a Jone sa femme et a les heirs de lour deux corps engendretz saunz garr[antie], et la reversioun a J. Et issint le vouche il par resoun de la rever-sioun.

*Herle.* Le statut veot qe homme soit ousté de delays. Ore sy ceo vouchier soit r[eceu] ceo serroit affaire plus delays, qar autrefoiz serra il meismes vouché, et issint ceo vouchier n'est sy noun a nous delaier de nostre droit.

<sup>1</sup> Text from B.

III.<sup>1</sup>

Robert de Maners brought his writ of formedon against John Randolf and Joan his wife and demanded the manor of Hayetz with the appurtenances, except one messuage and two virgates of land. And he counted of the seisin of one Richard the son of P., who gave the manor etc. to John de Maners in frank-marriage with Katherine his daughter; he took the esplees in homage, in rent, in corn and in herbage etc. as of fee etc. And [the demandant] counted of the seisin of John his father in the time of King Henry.

*Toudeby* defended and said that the writ of formedon in the descender is given by a Statute made in the time of King Edward etc., for before the Statute there was no recovery. And [said he] he has counted of the seisin of [J.] in the time of King Henry, in which time a writ of formedon was not ordained. Therefore we demand judgment whether he should be answered to such a count founded on such a writ.

*Westcote*. His writ cannot be warranted by the Statute, nor can it be a warrant for his count, for in the time of which he has counted a man might alienate at once after issue had, and the Statute wills 'that as to an alienation hereafter to be made etc.,' and it does not extend to gifts already made. Judgment.

*Herle*. The Statute serves as well for gifts made before as for those made after the Statute, if the tenements are not alienated before the Statute, but [the parties] have continued their estate by the form [of the gift] and alienated after the Statute. So will you answer?

*Toudeby*. We will give answer enough if the Court sees that this writ can be warrant for this count.

*Malberthorpe*. As he cannot deny that the alienation was made before<sup>2</sup> the Statute and will say nothing else, [we pray] judgment.

*Toudeby* was driven to plead over. And for all, except a messuage and a carucate of land, he vouched J. by virtue of a fine, which said that one J. Randolf made conusance of the right to J. as that which he had of his gift, and J. granted and rendered to J. Randolf and Joan his wife and the heirs of their two bodies begotten, without warranty, with reversion to J. And he vouches [J.] by reason of the reversion.

*Herle*. The Statute<sup>3</sup> wills that men be ousted from delays. But if this voucher be received, that will be to make more delays, for on another day [the voucher] will himself be vouched, and so this voucher is only to delay us from our right.

<sup>1</sup> This report appears in the Old Edition, p. 89.

<sup>2</sup> Apparently we should read 'after.'

<sup>3</sup> Stat. Westm. I. c. 40.

*Fr.* Countrepledietz vous nostre voucher ?

*Herle.* Estoise etc.

*Toud.* Qaunt al mees et caruee de terre J. n'ad ren ; mès Jon Randolf est soul tenaunt a terme de sa vie du lees un A. Et vouch[oms] etc.

#### IV.<sup>1</sup>

Un Johan porta son bref de forme de doun vers R. Randolf et A. sa femme, et conta qe un W. fu seisi et dona le manoir de N., forspris un mies et xxiij. acres de terre, ove les appurtenanz a P. de C. et Lucé sa femme et les heirs de lour deus corps issanz ; par quel doun il furent seisi de ceu manoir, forpris les forprises, en lour demeine com de fee et de droit par la forme en temps le Roi H[enry] ael etc. ; de P. e A. descendi la droit par la forme avantdite forspris etc. a Johan com a fiz etc. qe ore demande.

*Touth.* defendi et demanda jugement de lour count, desicom il ont conté qe le doun se fist en temps le Roi H[enry] ; et ceux temps<sup>2</sup> n'y avoit nul bref de forme de doun autre qe en le *reverti* ; et cestui bref est doné par statut de Westm[oustier] seconde du temps le Roy E[dward] pere etc., e le statut n'ad regard mès au douns pus la confection : ergo etc.

*Herle.* Ceo est une exception al action. Voelent il ceo pur respons ?

*Touth.* Nous le voloms pur counte abatre.

*Bereford.* Si vostre excepcion puet estre averé, lour action est atteint<sup>3</sup> pur touz jours. Pur ceo veez coment volez demorir.

*Touth.* ut prius.

*Herle.* Vous recorder q'il se tenent a cele excepcion qe est a nostre action. Et de ceo nous enparleroms.

Et revynt *Herle* et dist : Sire il ont granté qe le doun se fist ; et nous voloms averer qe l'alienacion se fist pus le statut de West[moustier]. Et demandoms jugement et prioms seisine de la terre.

Et pus *Touthby* weyva et dist qe [de] tut la demande,<sup>4</sup> forpris un mies et une carué de terre, il vouchount a garant Johan de Rokesforde Evesqe de Welles et de Baa, a quei la reversion des tenemenz apent, et par ceo fin. Et la fin voleit qe R. Dandalf et A. sa femme conissent les tenemenz contenuz en le bref estre le droit Johan Evesqe de Baa com ceo q'il avoit de lour doun, et pur ceste resconissance

<sup>1</sup> Text from Y (f. 112d).    <sup>2</sup> et ceux tenz' [=tenemenz] Y.    <sup>3</sup> Corr, esteint (?).    <sup>4</sup> dda [=demanda] Y.



*Friskenev.* Do you counterplead our voucher ?

*Herle.* Let it stand.

*Toudeby.* As to the messuage and carucate of land, [Joan] has nothing, but John Randolph is sole tenant for his life by the lease of one A. ; and we vouch [him].

#### IV.

One John brought his writ of formedon against R. Randolph and A. his wife and counted that one W. was seised and gave the manor of N., except a messuage and twenty-four acres of land, with the appurtenances to P. de C. and Lucy his wife and the heirs of their two bodies issuing ; and that by this gift they were seised of this manor, except as excepted, in their demesne as of fee and of right by the form [of the gift] in the time of King Henry, grandsire, etc. ; from P. and [L.] the right descended by the form aforesaid, except etc., to the demandant, John, as son and heir.

*Toudeby* defended and demanded judgment of their count, since [said he] they have counted of a gift made in the time of King Henry ; and in those times there was no writ of formedon otherwise than in the reverter etc. ; and this writ is given by the Statute of Westminster II. of the time of King Edward, father etc., and the Statute has regard only to gifts made after its making. Therefore etc.

*Herle.* That is a plea to the action. Do they wish it to be their answer ?

*Toudeby.* We plead it in abatement of the count.

BEREFORD, C.J. If your plea can be made good, their action is [extinguished] for ever. Therefore beware how you will demur.

*Toudeby* as before.

*Herle.* You will record how they hold to this plea which goes to our action. Of that we will imparl.

*Herle* returned and said : Sir, they have admitted that the gift was made ; and we will aver that the alienation was made after the Statute of Westminster. We demand judgment and pray seisin of the land.

Afterwards *Toudeby* waived his plea, and said that as to the whole demand, except a messuage and carucate of land, they vouch one John of [Drokensford] Bishop of Wells and Bath, to whom the reversion of the tenements belongs by a fine (which was produced). And the fine said that R. Randolph and A. his wife made consuance that the tenements contained in the writ were the right of John, Bishop of Bath, as that which he had of their gift, and for this consuance the said Bishop

Johan Evesque granta et rendi au ditz R. et A. le dit manoir a terme de lour ij. vies. Et qaunt au mees et la carué de terre, R. vous dit<sup>1</sup> et de ceo vouche il a garant une Katerine qe deit estre somonz etc. Et pus l'Evesqe vient en court et garantist. Et Johan qe porta cestui bref conust le droit al Evesqe a la Pasche procheyn suyant, et ceo lui relessa et quiteclama etc.

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 180d, Hants.

Robert of Maners, by his attorney, demands against John Randolf and Joan his wife the manor of Asshe<sup>2</sup> by Overtone with the appurtenances (except one messuage and two virgates and eight acres of land and fifteen acres of wood in the same manor) which Reginald, son of Peter, gave to John of Maners in frank marriage with Alice, daughter of the said Reginald, and which after the death of John and Alice ought to descend by the form of the gift to [the demandant], as son and heir of John and Alice. And there-upon he says that Reginald was seised of the manor with the appurtenances and gave the manor with the appurtenances (except etc.) to John in frank marriage with Alice in form aforesaid, and that by this gift John and Alice were seised in time of peace, in the time of Henry [III.]<sup>3</sup> by taking thence esplees etc., and from them descended the right etc. by the form of the gift to Robert, the demandant, as son and heir etc. And thereof he produces suit etc.

And John Randolf and Joan, by their attorney, come. And as to one messuage and one carucate of land of the demanded tenements, they say that Joan has nothing etc., but that John Randolf alone holds them for the

#### 7. ARDERN *v.* WHELTON.

*Cui in vita* ou le tenant pleda en defesant le tittle le demandant, set non tenuit locum por ceo qe le demandant adonques ne pleda mye en propre persone mais par baillif. Et puyz traversa l'entré etc.

#### I.<sup>4</sup>

Thomas de Ardeyn<sup>5</sup> et Hawyse sa femme porterent lour *cui in vita* vers Aleyn et Johane sa feme et demanda<sup>6</sup> certeinz tenemenz etc. lez queux ele clama com soun fraunk tenement del doun Emme Grosset<sup>7</sup> qe les dona a un Richard soun premir baroun et a Hawyse et a les heirs Richard, en les queux il n'avoit<sup>8</sup> entré etc.

<sup>1</sup> An omission may be suspected. <sup>2</sup> Mod. Ashe by Overton. <sup>3</sup> There has been erasure near this point. <sup>4</sup> Text from *A*: compared with *D*, *T*. Headnote from *D*. <sup>5</sup> de Ardern' *D*; Darderne *T*. <sup>6</sup> demaunderent *T*. <sup>7</sup> M. Grosset *T*. <sup>8</sup> ny ount *D*.

John granted and rendered the said manor to the said R. and A. for their two lives. And as to the messuage and the carucate of land R. vouches to warrant one Katherine, who is to be summoned [in such a county]. And afterwards the Bishop came into court and warranted. And at Easter next following John, who brought this writ, made conusance of the right to the Bishop and released and quitclaimed to him etc.<sup>1</sup>

**Note from the Record** (*continued*).

term of his life by the demise of John de la Sale and Katherine his wife. And he vouches them to warrant in form aforesaid. And as to the residue of the demanded tenements, John Randolf and Joan his wife say that they hold them to them, John and Joan and the heirs of John of his body begotten, so that if John shall die without an heir of his body begotten, then after the decease of them, John and Joan, the tenements shall entirely revert to John of Drokenesforde and his heirs etc., by a fine levied in the court of Edward [I.] before his justices here, a 'part' of which he proffers and which witnesses this [and <sup>2</sup> in form aforesaid they vouch John of Drokenesford to warrant thereof].

Therefore let them have them here in the octave of the Purification by aid of the court etc. And be they summoned in the same county etc.

Afterwards<sup>3</sup> at that day came Robert and likewise John Randolf and Joan by their attorneys. And the warrantors came not. And the sheriff was commanded to summon them etc., to warrant etc.; and he has not sent the writ. Therefore, as before, the sheriff is commanded to summon them to be here in the octave of St. John Baptist etc. The same day is given to Robert, the demandant, by his attorney in the Bench etc.

## 7. ARDERN *v.* WHELTON.

A woman is not debarred from her *cui in vita* by the verdict of an assize of novel disseisin brought against her and her husband, if to that assize she appeared by bailiff.

### I.

Thomas of Ardern and Hawise his wife brought their *cui in vita* against Alan and Joan his wife, and demanded certain tenements etc. which she claimed as her freehold by the gift of Emma Grosset, who gave them to one Richard, her first husband, and to her and to the heirs of Richard, and into which [they] had no entry unless etc.

<sup>1</sup> The record does not warrant this last statement.    <sup>2</sup> Interlined.    <sup>3</sup> Postscript.

*West.* Aultrefoitz Aleyn et Johane sa femme porterent un assise de novele disseisine vers Richard le premir baroun<sup>1</sup> et Hawyse et James<sup>2</sup> etc. coram iusticiariis etc., ou il disoient q'il avoient ceaux tenemenz del doun l'avauntdit E., non<sup>3</sup> pas par disseisine, sur qei l'assise prise, par quele assise trové fust qu'il n'avoit rien du doun Emme; par qei nous demaundoms jugement si a tiel tittle, ou le contrarie est trové par verdit d'assise, devet estre r[espondu].

*Fris.* Vous dites trop poi a nous barrer si vous ne deisset qe nous<sup>4</sup> clamoms<sup>5</sup> et pledames a tiele assise en propre persone, et n'entendoms qe par nul assise par<sup>6</sup> r[espons] du baillif nous peusse de cesty bref ouster.

*West.* traversa l'entré.<sup>7</sup> Et ideo ad patriam.

## II.<sup>8</sup>

Thomas de Arderne<sup>9</sup> et Hawise<sup>10</sup> sa femme porterent lour bref<sup>11</sup> vers Johane qe fut la femme Aleyn Walter<sup>12</sup> sic: 'que clamat tenere ad terminum vite ipsius H. de dono Emme Crosset etc., et in que non habet ingressum nisi per Ricardum Sire, quondam virum ipsius H. etc.'

*West.* Par le doun Emme ne poet rien clamer, qe autrefeze Aleyn nostre baroun et nous portames vers Richard vostre baroun et vous mesmes et James vostre fitz bref de novele disseisine de mesmes les tenemenz; a quel bref fut r[espondu] pur Richard et pur vous qe vous n'aviet nul tort fet ne nule disseisine, eynz entrastes par le feffement cesti Emme de S.; par verdit de quele assise<sup>13</sup> trové fut etc. qe de vostre tort<sup>14</sup> demene et par vostre disseisine etc. et ne mye par E. Par quey nous recoverames etc. Et demaundoms jugement, de l'oure qe par qey verdit trové fut qe E. ne vous dona pas etc., a quel assise<sup>15</sup> vous esteiet partie, si vous par le doun E. rien pusset clamer.

*Frisk.* Coment plede H.<sup>16</sup>? R[espondit] ele en propre persone?

*Malm.*<sup>17</sup> Conuset l'assise, et dites par baillife si vous quidet d'avoir avantage par cel respouns.

*Berr.* Vous avet le record de cele assise, et le biet user pur vous. Dount par cel vera homme si ele pleda par baillife ou en propre persone. Et tut ust ele pledé en propre persone, ceo dount vous pernez la force de vostre reson<sup>18</sup> si est q'ele n'entra mye par le feffement E.,

<sup>1</sup> *Ins.* Hawise D. <sup>2</sup> Jam' A; James fitz D; James filz T. <sup>3</sup> et noun D. <sup>4</sup> ne A, D, T. <sup>5</sup> *Corr.* clamames. <sup>6</sup> *Om.* assise par D. <sup>7</sup> *lientier D, end of case.* <sup>8</sup> Text from R: compared with M, P. <sup>9</sup> Arden M; Ardeyn P. <sup>10</sup> Alice M; Agnes P. <sup>11</sup> le cui in vita P. <sup>12</sup> Aelm' de Wlet' M. <sup>13</sup> seisine. R; assise M, P. <sup>14</sup> bref R; tort M, P. <sup>15</sup> seisine R; assise M, P. <sup>16</sup> Corust ple de H. M; Coment pleda ele P. <sup>17</sup> *Om.* this speech P. <sup>18</sup> pernez vostre force M; pernez vostre fet P.



*Westcote.* Heretofore Alan and Joan his wife brought an assize of novel disseisin against Richard the first husband and Hawise and James [their son] before justices etc., where [the defendants] said that they had those tenements by the gift of the said Emma, and not by disseisin; whereupon the assize was taken; and by the assize it was found that [they] had nothing by the gift of Emma. Therefore we demand judgment whether you ought to be answered to such a title where the contrary is found by verdict of an assize.

*Friskenev.* You say too little to bar us, unless you say that we claimed and pleaded to the assize in proper person; and we do not think that you can oust us from this writ by any assize to which we answered by bailiff.

*Westcote* traversed the entry.<sup>1</sup> And so to the country.

## II.

Thomas of Ardern and Hawise his wife brought their writ against Joan, who was the wife of Alan [of Whelton], thus: 'which she claims to hold for the life of the said Hawise by the gift of Emma [Grosset] etc. and into which she [Joan] has no entry unless by Richard Sire, sometime husband of Hawise etc.'

*Westcote.* By the gift of Emma you can claim nothing, for heretofore Alan, our husband, and we brought a writ of novel disseisin against Richard, your husband, and you and James your son for the same tenements; and to that writ it was answered for Richard and for you that you had done no tort and no disseisin, but entered by the feoffment of this Emma [Grosset]; and by verdict of the assize it was found that [you entered] by your own tort and disseisin, and not by Emma; and therefore we recovered. We pray judgment whether you can claim anything by the gift of Emma, since it is found by verdict of an assize, to which you were party, that she did not give to you.

*Friskenev.* How did Hawise plead? In proper person?

*Malberthorpe.* Confess the assize and then say 'By bailiff,' if you think that answer will avail you.

BEREFORD C.J. You have the record of this assize and desire to use it for your profit, and by it can be seen whether she pleaded by bailiff or in her proper person. And even if she pleaded in her proper person, what you found your case upon is that she did not enter by Emma's feoffment, and that matter lies outside the points of the

<sup>1</sup> Or 'traversed the whole.'

q'est hors de poyns d'assise, et ne chet poynt en<sup>1</sup> charge de assise,<sup>2</sup> qe sanz cel si<sup>3</sup> trové ust esté qe ele n'entra<sup>4</sup> par disseisine, asset serreit.<sup>5</sup> Dount vous ne poet la demorer.

Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 108, Bucks.

Thomas of Arderne and Hawisia his wife, by their attorney, demand against Joan, wife that was of Alelin of Wheltone, one messuage, one carucate and one virgate and a half of land and two shillingworths of rent with the appurtenances in Iillingston Dayrel, which they claim to hold for the life of Hawisia by the demise which Emma, wife that was of Richard, son of Peter Grosset, made thereof to Hawysia and Richard son of Richard, sometime her husband, and the heirs of Richard, and into which Joan has no entry unless by Emma Grosset, to whom Richard, sometime husband of Hawysia, whom in his lifetime she could not gainsay, demised them.

And Joan, by her attorney, comes and defends their right when etc.; and she says that, whereas Thomas and Hawisia by their writ suppose that Richard Grosset, sometime husband of Hawisia, demised the tenements to

8. MALVERN (PRIOR OF) *v.* VERNON.

Derrein presentement, ou homme de religion alegea derrein presentement sauncz mostrer tittle de apendaunce, ou il covent voyder touz et qaunt il sount voidés il tendra a un.

De ultima presentacione, ou le pleintife allegea iiij. persones, et le deforceor fut chacé a respondre a toutz. Et sic fecit, et les granta, et pus les voida pur causes etc.

I.<sup>6</sup>

Le Priour de Malverne<sup>7</sup> porta un assise de derreyn present[ement] vers R. de Verrenoun<sup>8</sup> et pria etc. qi avowé en temps etc. Et dit qu'il mesme presenta un soun clerk etc. tempore etc. et soun predecessour devaunt presenta ij. foitz tempore eiusdem Regis, qi a soun presentement etc., et Hubert soun predecessour presenta ij. clerks tempore Regis H[enrici].

*Malb.* Nous vous dioms q'une Maude fust seisi du manoir etc., a qi etc., qi presenta un son clerk etc. tempore Regis J[ohannis],

<sup>1</sup> *Om. en R.*

<sup>2</sup> en lour charge *M, P.*

<sup>3</sup> qe *M.*

<sup>4</sup> *Corr. entra (?)*.

<sup>5</sup> charge et assez pleyн verdit ust este qe cle dis' J. et A. etc. *P.*

<sup>6</sup> Text from *A* :

compared with *D, T.* Headnotes from *A, D.*

<sup>7</sup> *Malm' A, D, T.*

<sup>8</sup> *Vernoun T.*

assize and does not fall within the charge of the assize; for even without that [finding], it would have been enough<sup>1</sup> had the assize found that she entered<sup>2</sup> by disseisin. So you cannot 'demur' there.

**Note from the Record** (*continued*).

Emma, she [Joan] denies that Emma had the tenements by the demise of Richard, but [she had them] by the demise of Ralph Dayrel; and of this she puts herself upon the country.

Issue is joined, and a *venire facias* is awarded for the quindene of St. Hilary.

Afterwards, in the quindene of Trinity in A.R. 6, came the parties by their attorneys and likewise the jurors chosen by consent of the parties. And they say upon their oath that Richard Grosset, sometime husband of Hawysia, demised all the said tenements, except one virgate of land and a moiety of the messuage on the side of the east, to Emma. Therefore it is awarded that Thomas and Hawysia recover their seisin against her [Joan] of the said tenements, except the virgate and the moiety of the messuage; and that Joan be in mercy; and that likewise Thomas and Hawysia be in mercy for their false claim against Joan etc.

## 8. MALVERN (PRIOR OF) *v.* VERNON.<sup>3</sup>

*Darein presentment* by a Prior who counts on the last six presentations. The impediens pleads title in a presentation preceding the six. He must avoid all six and not only the last. He avoids all six for various causes, such as infancy and coverture. The plaintiff must now elect one among the six and traverse the alleged cause of avoidance.

The Prior of Great Malvern brought an assize of darein presentment against R. de Vernon, and prayed [that it be found] what patron [presented the last parson] in time of peace. And he said that he presented his clerk in the time of etc., and that his predecessor presented twice in the same King's time, and [the clerks were admitted] at his presentation; and his predecessor Hubert presented two clerks in the time of Henry [III.].

*Malberthorpe.* We tell you that one Maud was seised of the manor etc. to which etc. and presented a clerk of hers in the time of

<sup>1</sup> Or 'it would have been a full of our books gives 'did not enter.'  
enough verdict.'

<sup>2</sup> This seems the right reading. One

<sup>3</sup> This case is Fitz. *Darren presentment*, 6.

dout de Maude descendi le droit du manoir cum advocacione a Richard cum a fitz etc., de Richard, pur ceo qu'il morust saunz heir etc., a Robert com a friere, de Robert a Johan, de Johan a Richard vers qi ceste bref est ore porté, et issint appent a nous a presenter.

*Fris.* Qei responez vous al derrein presentement ?

*Malb.* Vous estes homme de religioun et n'entendoms mye que par nul poss[essioun] que vous avez saunz moustrer title coment<sup>1</sup> le presentement a vous appent<sup>2</sup> devet al assise avenir.

*Toud.* Depuis que nous avoms moustré le presentement estre fait par<sup>3</sup> nous et par nos predecessours de si haut temps, n'entendoms mye que nous avoms mestier<sup>4</sup> aultre title moustrer saunz ceo que vous respoignez al presentementz.

*Berr.* Il dit q'il presenta la derreine persone etc. et ceo est soun derreyn presentement, a quei vous covent respondre.

*Malb.* Jeo conu bien q'il presenta derrein, mez ceo nous ne<sup>5</sup> deyt<sup>6</sup> grever pur ceo q'adonques si fust E.<sup>7</sup> dedeinz age.

*Fris.* Quei responez vous a lez aultrez ?

*Malb.* Jeo plede<sup>8</sup> moun *quare impedit*, que j'ai moustré mon title coment a moy appent a presenter et j'ay defait le derreyn<sup>9</sup> presentement, et n'entendoms mye que ley nous chace outre a respondre a lez aultrez.

*Berr.* Il ad dit qu'il mesme presenta etc. et cez predecessours devaunt luy puis le temps vostre auncestre de qi vous pernez vostre title, chesqun après aultre immediate *ut supra* ; par ount il covent que vous respoignez a les aultrez.

*Pass.* Nous avoms respondu al derreyn presentement et deymes qu'il estoit<sup>10</sup> adonques de deynz age, par quei si nous r[espoundrioms]<sup>11</sup> a les aultrez nous<sup>12</sup> pledroms al assise la ou l'assise devaunt est chargé sur certeyn point et torné hors de assise en enqueste.

*Malm.* Qaunt al derrein etc. de deynz age, et qaunt a ij. presentement M. auncestre R. etc.<sup>13</sup> coverte de barroun etc., et qaunt a iij. presentement etc. tenant par la ley di'Engleterre. (Et sic respondit ad omnes presentaciones.)

*Berr.* Il ad conu lez presentementz,<sup>14</sup> mez il ad touz voidé *ut supra*, par quei il covent les tenir a un presentement.

Et sic fecit etc.

<sup>1</sup> que vous avez que nous avoms mestier sanz autre title moustr' r' coment D.  
<sup>2</sup> *Ins.* ne D.    <sup>3</sup> par D ; a A, T.    <sup>4</sup> *Ins.* a D, T.    <sup>5</sup> *Om.* ne A, D, T.    <sup>6</sup> *Ins.* poynt D.    <sup>7</sup> R. D, T.    <sup>8</sup> jeo ay plede D.    <sup>9</sup> derrey A ; dreyn D ; drein T.  
<sup>10</sup> fut D.    <sup>11</sup> responoms D.    <sup>12</sup> nous D, T ; et A.    <sup>13</sup> deux present' deux aunc' R. etc. T.    <sup>14</sup> le present' T.



King John, and from her the right of the manor with the advowson descended to Richard as son etc.; and from Richard, because he died without heir [of his body], to Robert as brother; from Robert to John; from John to Richard, against whom this writ is now brought;<sup>1</sup> and so it belongs to us to present.

*Friskeney.* What do you answer to the last presentment?

*Malberthorpe.* You are a man of religion, and we do not think that by reason of any possession you can get to the assize without showing title whereby the presentation belongs to you.

*Toudeby.* Since we have shown that the presentation was made by us and our predecessors from so high a time, we do not think that we have need to show any other title, unless you answer to the presentments.

BEREFORD, C.J. He says that he presented the last parson etc., and this is his darein presentment, and to that you must answer.

*Malberthorpe.* I did confess that he presented last; but that should [not] hurt us, for then [my client] was under age.

*Friskeney.* What of the other [presentations]?

*Malberthorpe.* I am pleading my *quare impedit*,<sup>2</sup> for I have shown title whereby it belongs to me to present, and I have defeated the darein presentment. And we do not think that the law drives us to answer to other [presentations].

BEREFORD, C.J. He has said that he himself presented etc. and his predecessors before him [ever] since the time of your ancestor, from whom you take your title, in unbroken succession<sup>3</sup> *ut supra*. So it behoves you to answer to the others.

*Passeley.* We have answered to the last presentation and said that [we] were then within age. Therefore, if we were to answer to the others, we should be pleading to the assize, whereas the assize is already charged upon one certain point and turned from an assize into an inquest.

*Malberthorpe.* As to the last [presentation] he was within age, and as to last but one, M. his ancestor was covert, and as to the third [our ancestor] was tenant by the curtesy. (And so he answered to all the presentations.)

BEREFORD, C.J. He has confessed all the presentations, but has avoided them. So you must hold to one presentation.

And so he did.

<sup>1</sup> For the pedigree see our note from the record.

<sup>2</sup> A cross-action had been brought.

<sup>3</sup> This apparently is the meaning of *immediate*.

II.<sup>1</sup>

Le Priour de Graunt Malum<sup>2</sup> porta<sup>3</sup> une assise etc. vers Richard Vernoun<sup>4</sup> et pria qe reconu fut qe avowé etc. presenta etc. al eglise de Pichecote. Et dit par *King.* qe son predecessour W. etc. presenta la dreyne persone etc., par qy mort etc., en temps le Roi E[dward], et devaunt ly un son predecessour presenta la plus procheyne persone etc.; et ensy afferma il estat par vj.<sup>5</sup> presentementz de ces predecessours *vicissim*,<sup>6</sup> les presentementz fetz en temps le Roi H[enri] et E[dward].

Et<sup>7</sup> *Malm.* Nous avowoms un *quare*<sup>8</sup> *impedit* de mesme l'avoweson vers le Prior; et vous dioms qe a nous apent a presenter, et par la resoun qe une nostre besael Maude, qe fut seisi du manoir de Pyhecote a qy l'avoeson etc., en temps le Roi J[ohan]<sup>9</sup> a cele eglise presenta un son clerke W. de P., qy a son presentement etc. De Maude descendy a Richard com a fitz; de Richard a Robert com a fitz; de Robert a Hawyse com a file; de Hawise a Richard com a fitz,<sup>10</sup> vers qy etc. E la ou il dient qe W. presenta la dreyne persone etc., cel presentement ne nous<sup>11</sup> deit grever, qe au cel temps fut cely Richard dedens age.

*Toud.*<sup>12</sup> Bien est. Qe dites vous al procheyn presentement devaunt ceste presentement<sup>13</sup> fet auxi par nostre predecessour?

*Malm.*<sup>14</sup> A ceo n'avoms mester a respondre, qe vous pernez vostre title de dreyn presentement etc. a qy jeo ay respondu.

*Berr.* Totes defetes<sup>15</sup> vous le title q'il fet par le dreyn presentement dount il parle,<sup>16</sup> uncore demert le title del dreyn presentement procheyn avaunt cel, terce, quarte, quinte et sime<sup>17</sup>; dount il vous covent respondre a les autrez.

*Malm.* Le procheyn devaunt cel ne nous<sup>18</sup> deit nure, qe au cel temps Richard mesme dens age; ne le terce presentement, qe au cel temps tynt un Geffrei baroun Hawise par la ley d'Engleterre etc.; ne le quarte qe adonqe fut H[awise] covert de baroun; ne le quinte, ne le syme presentement, qe adonqe fut Richard le fitz<sup>19</sup> Maude nostre besael dedens age.

<sup>1</sup> Text from *R*: compared with *M*, *P*, *B*.    <sup>2</sup> Mallynge *P*.    <sup>3</sup> par *R*.    <sup>4</sup> de Mertone *M*.    <sup>5</sup> viij. *B*.    <sup>6</sup> divisim *B*.    <sup>7</sup> *Om.* Et *M*.    <sup>8</sup> *Malm.* Nostre *quare M*; Richard ad porte vers vous un *quare P*; Nous avoms nostre *quare B*.  
<sup>9</sup> Richard *P*.    <sup>10</sup> *Om.* de Richard a Robert . . . fitz *M*; *sim. P*.    <sup>11</sup> vous *R*; nous *M*.    <sup>12</sup> Frisk. *P*.    <sup>13</sup> al procheine presentement paramount *B*.    <sup>14</sup> Toud. *P*.  
<sup>15</sup> defacez *M*, *P*; deffacet *B*.    <sup>16</sup> *Om.* dount il parle *M*, *P*.    <sup>17</sup> devaunt cele certain ou v. (?) *M*; devaunt soit ceo le iij. ou le iiij. ou le v. *P*; et del terce quarte quinte et vje *B*.    <sup>18</sup> vous *R*, *M*; nous *P*.    <sup>19</sup> fit *R*.

II.<sup>1</sup>

The Prior of Great Malvern brought an assize etc. against Richard Vernon, and prayed that it be found what patron etc. presented etc. to the church of Pyhecote.<sup>2</sup> And he said by *Kingeshemede* that his predecessor W. etc. presented the last parson etc., by whose death [the church is vacant], in the time of King Edward, and that before him a predecessor of his presented the next latest parson etc.; and so he affirmed his estate by six successive presentations of his predecessors made in the times of Kings Henry and Edward.

*Malberthorpe.* We have a *quare impedit* against this same Prior; and we tell you that it belongs to us to present, and for the reason that our great-grandmother Maud, who was seised of the manor of Pyhecote, to which the advowson belongs, presented to this church in the time of King John one W. of P. her clerk, who at her presentation [was admitted] etc. From Maud [the right] descended to Richard as son; from him to Robert as son;<sup>3</sup> from him to Hawise as daughter; from her to Richard [the defendant] as son. And whereas they say that W. presented the last parson, this presentation ought not to hurt us, for at that time Richard was within age.

*Toudeby.* So be it. What say you to the next latest presentation, for that also was made by our predecessor?

*Malberthorpe.* To that we have no need to answer, for you take your title from the last presentation, and to that I have answered.

BEREFORD, C.J. Although you defeat the title he made by the last presentation whereof he speaks, there still remains the title by the next last, and by the third, fourth, fifth and sixth, so you must answer to the others.

*Malberthorpe.* The next last ought not to hurt us, for at that time this Richard was within age. Nor the third, for at that time one Geoffrey, husband of Hawise, was tenant by the curtesy. Nor the fourth, for then Hawise was coverte. Nor the fifth, nor the sixth, for then Richard son of Maud, our great-grandfather, was within age.

<sup>1</sup> This report appears in the Old Edition, p. 83.

<sup>2</sup> *Mod.* Pitchcott, north of Aylesbury.

<sup>3</sup> Really as brother. See our note from the record.

*Toud.* enparla, et pus dit qe lour auncestres q'il allegent dedens age etc. furent de age, prest etc., et qe le baroun H[awise] ne tynt poynt par la ley d'Engleterre au terce presentement, ne H[awise] covert de baroun au quart etc.<sup>1</sup>

*Malm.* Nous sumes hors de poyntz d'assise, dount il covent qe nous seoms a issue en un certeyn poynt.

Ad alium diem *Pass.* qe fut ove Richard Vernoun<sup>2</sup> non tamen fuit ad dictum placitum.<sup>3</sup>

*Stanttone* rehera<sup>4</sup> ceo plee et les comensa charger de toux les poyntz avaunt ditz.

*Pass.* En plee d'assise put homme enquere de un poynt tanqe a autre, et a plusors tanqe homme ne seyt<sup>5</sup> point hors de poyntz de assise. Mès si le plee pregne issue hors de poyntz de assise etc. donqe covent avoir un poynt certeyn. Par qey de l'oure qe nous sumes hors des poynts d'assise etc., et<sup>6</sup> tot veusit la partie mespleder, la court ne deit pas suffrir issue desacordaunt a ley.

*Berr.* Jeo ne vy unqes dreyn presentement si malement<sup>7</sup> pledé.

*Malm.* Jeo prenge<sup>8</sup> vostre recorde qe jeo pleday<sup>9</sup> nostre *quare impedit* q'est a cest bref r[espouns], et les voley<sup>10</sup> avoir chacé a tenir<sup>11</sup> a un poynt pus q'il plederent<sup>12</sup> hors de poyntz d'assise.

*Berr.* Homme vous recorderay bien ceo qe vous avet pledé. Mès jeo say bien qe vous estes a issue hors de poyntz de assise qe l'assise est graunté<sup>13</sup> qe le grauntez le dreyn presentement.

*Malm.* Pur ceo priay jeo qe la court mist<sup>14</sup> a tenir<sup>15</sup> certeyn poynt.

*Berr.*<sup>16</sup> Unqes ne vous ay jeo oy<sup>17</sup> parler<sup>18</sup> tanq'ore.

*Toud.* Nostre bref veut 'quis advocatus etc.,' et tot nous grauntout il les presentementz, il ne nous graunte pas l'avowesoun.<sup>19</sup>

*Berr.* Noun, mès a tiel tittle de<sup>20</sup> avowe,<sup>21</sup> qe vous fetes,<sup>22</sup> il vous r[espount] qe en<sup>23</sup> temps ne vous vaudreit<sup>24</sup> etc. q'il fut dedens age. N'est ceo hors de poyntz de assise? Dount est son r[espouns] hors

<sup>1</sup> *Om.* next two paragraphs *P.*    <sup>2</sup> *Alit'* *Pass.* par Ric Venum *M.*    <sup>3</sup> *Ins.* et assisa jur. *M.*    <sup>4</sup> *Alio die venit Stantone rehercea B.*    <sup>5</sup> *forge M; forjugge B.*  
<sup>6</sup> *Om.* et *M, P, B.*    <sup>7</sup> *mal B.*    <sup>8</sup> *pri B.*    <sup>9</sup> *plede M; pleda P.*    <sup>10</sup> *voille M; voloi P.*    <sup>11</sup> *pleder M.*    <sup>12</sup> *plendent M.*    <sup>13</sup> *graunt R; graunte M, B.*  
<sup>14</sup> *nous meist B.*    <sup>15</sup> *court vousit attourner a un M.*    <sup>16</sup> *Om.* this speech *P.*  
<sup>17</sup> *Om.* oy *B.*    <sup>18</sup> *Ceo ne veyum (?) pas M; Ceo ne oy jeo B.*    <sup>19</sup> *graunte point doun B.*    <sup>20</sup> *a tiele de R; a tiel tittle de M.*    <sup>21</sup> *al tittle davowerie B.*    <sup>22</sup> *fistes M; feistes B.*    <sup>23</sup> *Ins.* cel *B.*    <sup>24</sup> *vendra M; vaudra B.*



*Toudeby* imparled, and afterwards said that all the ancestors who were said to be within age were of full age—ready etc.—and that Hawise's husband was not tenant by the curtesy at the third presentation, and that Hawise was not coverte at the fourth etc.

*Malberthorpe*. We are outside the points of the assize; so it behoves that we come to issue on one certain point.

On another day *Passeley*, who was not present at the above debate, [appeared] for Richard Vernon.<sup>1</sup>

STANTON, J., rehearsed the plea and began to charge [the jurors] with all the aforesaid points.

*Passeley*. In a plea of assize one may inquire touching one point after another, and so of various points, provided one is not outside the points of the assize. But if the plea takes issue outside the points of the assize, then it must be on one certain point. So [we pray judgment], since we are outside the points of the assize; and even if the parties wished to plead improperly, the Court would not suffer an issue that is not according to law.

BEREFORD, C.J. I never saw a darein presentment so ill pleaded.

*Malberthorpe*. I ask you to record that I pleaded our *quare impedit*, which is an answer to this writ, and that I desired to drive them to hold to one point, since they had pleaded outside the points of the assize.

BEREFORD, C.J. What you pleaded shall be recorded right enough; but I know well that you are at issue outside the points of the assize, for the assize is granted,<sup>2</sup> for you grant them the last presentation.

*Malberthorpe*. That was why I prayed that the Court would compel them to hold to one point.

BEREFORD, C.J. I never heard you talk of that before.

*Toudeby*. Our writ says 'what patron (*quis advocatus*) etc.,' and, although they concede us the presentment, they do not concede the advowson.<sup>3</sup>

BEREFORD, C.J. No, but to such title to the patronage as you make, they answer that [your presentation was made] at a time which will not avail you, since he was then within age. Is not that outside the points of the assize? So his answer goes outside the

<sup>1</sup> The record shows no adjournment from term to term. The dispute as to what *Malberthorpe* had said seems to show that nothing had as yet been placed upon the roll of the court.

<sup>2</sup> That is, you have conceded that the question formulated in the writ

would have to be answered in the Prior's favour.

<sup>3</sup> Probably it should be 'they do not concede us the *advocatus*': i.e. they do not admit that the presentation was made by one who can properly be called an *advocatus*.

de assise a une enqueste. Par qey il vous covent a force prendre un poynt.

*Toud.* Donqe pernoms nous al presentement qe nostre predecessour etc. en temps Richard le fitz Maude; et vous dioms q'il fut d'age etc.; et en evidence del assise dioms qe le dit Richard par son fet, qe si est, graunta et conferma al eglise de nostre Dame Graunt Malum' <sup>1</sup> la eglise de Pyhecote, <sup>2</sup> qe eux avoint del doun son pere et sa mere; et prioms etc. <sup>3</sup>

*Berr.* Voillez user ceo fet com bare ou en evidence?

*Toud.* Com evidence, et si nous usoms icy <sup>4</sup> la chartre de primer doun ovesqe cele qe nous ount conu q'en <sup>5</sup> les presentements nous le quideroms <sup>6</sup> bien barré <sup>7</sup> d'assise.

*Hervi* <sup>8</sup> chargea l'assise en forme d'enqueste del estre <sup>9</sup> Richard le fitz Maude; qe dit qe Richard fut dedens age <sup>10</sup> et qe la eglise valut xx. mares.

*Hervi*. <sup>11</sup> Si agarde la court qe Richard recovere son presentement etc., et eit bref al evesqe, *non obstante* etc., et ces damages de la value de la moyté etc. pur ceo qe le temps n'est point passé.

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 212, Buck.

The assize comes to find what patron in time of peace presented the last parson, who is dead, to the church of Pyhecote, <sup>12</sup> which is vacant etc., and the advowson whereof the Prior of Great Malvern in court here claims against Richard de Vernun etc. And thereupon the Prior, by William of Bikerton his attorney, says that one William of Ledebury, sometime Prior of Great Malvern, his predecessor etc., last presented to the said church one John of Toynton, his clerk, who at his presentation was admitted and instituted in time of peace, in the time of Edward [I.], and who last died parson in the same, by whose death the church now is vacant etc.; and before the said John, one William of Wykkewane, sometime Prior of Great Malvern, predecessor etc., presented to the same church one Luke de Bree, his clerk, who at his presentation was admitted and instituted in time of peace, in the time of Edward [I.] etc.; and before the said Luke, the same William of Wykkewane, predecessor etc., presented to the same church one William de la Lade, his clerk, who at his presentation was admitted and instituted in time of peace, in the time of Henry [III.]; and before the said William de la Lade, the said William of Wykkewane etc. presented to the

<sup>1</sup> Mallynge *P.*      <sup>2</sup> *Om.* to end of next two speeches *R.*      Text from *M.*  
<sup>3</sup> prioms qe lassise soit examine etc. *P.*      <sup>4</sup> nous eyoms *P.*      <sup>5</sup> *Om.* qen *P.*;  
 qest *B.*      <sup>6</sup> nous quidoms *B.*      <sup>7</sup> nous entendoms barr' lassise *P.*; barrer del *B.*  
<sup>8</sup> Stant. *M.*; *sim.* *P.*, *B.*      <sup>9</sup> estat *M.*, *P.*, *B.*      <sup>10</sup> par qei agarde fut etc. (*end of case*) *P.*      <sup>11</sup> Stant. *M.* *B.*      <sup>12</sup> Mod. Pitehcott.

assize to an inquest. Therefore you must needs betake yourself to one point.

*Toudeby.* Then we betake ourselves to the presentation by our predecessor in the time of Richard, son of Maud; and we tell you that he was of age etc.; and as evidence for the assize we say that Richard by his deed, which is here, granted and confirmed to the church of Our Lady of Great Malvern the church of Pyhecote which [we] had by the gift of his father and mother, and we pray etc.

BEREFORD, C.J. Would you use this deed as a bar or as evidence?

*Toudeby.* As evidence; and if we had here the charter of the original gift, then thereby, together with what they have admitted about the presentations, we could, so we think, well bar them from the assize.

STANTON, J., charged the assize in the form of an inquest as to the [estate] of Richard, son of Maud. The jury found that he was within age, and that the church was worth twenty marks.

STANTON, J. Therefore this Court awards that Richard recover his presentation, and have a writ to the bishop [with a] *non obstante* [for the Prior's claim], and also his damages to the value of half [the value of the church] as the time [six months] is not yet passed.<sup>1</sup>

#### Note from the Record (*continued*).

same church one William of Estone, his clerk, who at his presentation was admitted and instituted in time of peace, in the time of Henry [III.]; and before the said William of Estone, one Thomas of Bredone, sometime Prior of Great Malvern, predecessor etc., presented to the same church one Osbert of Wyz, his clerk, who at his presentation was admitted and instituted in time of peace, in the time of Henry [III.]; and before the said Osbert, one John de Cheynis, sometime Prior etc., predecessor etc., presented to the same church one Nicholas of Bredone, his clerk, who at his presentation was admitted and instituted in time of peace, in the time of Henry [III.]

And Richard comes and says that he has brought a writ of *quare impedit* against the said Prior for the advowson of the said church in the court here, which [writ] is pending between them touching the same etc.; and thereupon he says that at present it belongs to him, Richard, and not to the Prior, to present to the church; for he says that he is seised of the manor of Pyhecote, to which the advowson of the church pertains. Also he says that one Maud de Vernon, his great-grandmother, whose heir he is, was sometime seised of the said manor, to which etc., and she presented to the church one William of Pyhecote, her clerk, who at her presentation was admitted and instituted in time of peace, in the time of King John; and

<sup>1</sup> See Stat. Westm. II. c. 5.

Note from the Record (*continued*).

from her the right of the manor and advowson descended to one Richard, as son and heir; and from him, since he died without an heir of his body, the right descended to one Robert, as brother and heir, and from him the right descended to one Hawyse, as daughter and heir; and from her the right descended to Richard, the now [impedient], as son and heir. And as to the presentations which the Prior alleges that his predecessors made to the church, he [Richard] says that they ought not to hurt him in this behalf; for he says that at the time when William of Ledebury, sometime Prior, etc., predecessor etc., presented to the church John of Toynnton, etc., and at the time when William of Wykkewane etc., presented to the church Luke de Bree, he (Richard) who now is party to this plea etc. was within age; and at the time when William de Wykkewane etc. presented William de la Lade, one Gilbert Fraunceys, who had previously espoused the said Hawysia, mother of this Richard, held the manor of Pyhecote, to which etc., by the curtesy; and at the time when William of Wykkewane presented to the church William of Eston, Hawysia, mother etc., was under the power of Gilbert her husband; and at the time of the presentations of Osbert and Nicholas, sometime parsons, etc., Richard son of Maud, grandfather<sup>1</sup> of this Richard, was within age etc.; and this he is ready to aver as the Court shall consider. Wherefore he says that Maud, his great-grandmother, as true patron, last presented to the church William of Pichecote. And since the Prior has alleged that his predecessors made sundry and divers pre-

9. PLESELEY *v.* SPALDING.

*Quid iuris clamat*, ou el myst avaunt fyn en prove qe l'auncestre le grauntour relessa a ly etc. et obliga etc.; et l'autre receu d'averer qe longe temps devant etc. l'autre fust seisi par soun graunt et attournement etc. et graunta a ly.

I.<sup>2</sup>

Un A. suyst le *quid iuris clamat* vers une femme par r[esoun] d'un graunt qe William de Plecy fist al avaundit A.

*Malb.* Nichole de Plecy piere William, qi heir etc., en nostre seisine nous relessa et quiteclama tot le droit q'il avoit ou aver pout<sup>3</sup> par fyn levé etc. et obliga luy et ces heirs a la garrauntie etc., et issi avoms fee etc.; jugement si par nul graunt fait<sup>4</sup> par William fitz Nichol etc. devoms attorner.<sup>5</sup>

*Scrop.* Cele femme tient longe temps avaunt la fyn de<sup>6</sup> William

<sup>1</sup> Some mistake has been made. According to the descent stated above, the grandfather was Robert. <sup>2</sup> Text from *A*: compared with *D*, *T*, *P*. Head-note from *A*. <sup>3</sup> *Ins.* et *D*. <sup>4</sup> fait fait *D*. <sup>5</sup> attorner qi cel fee tynt *D*. <sup>6</sup> a *D*.



**Note from the Record** (*continued*).

sentations to the church, to quash and annul which presentations, one after the other, Richard has made answer above, he prays that the Prior do hold himself by way of title to whichever one of those presentations by his predecessors he [the Prior] shall prefer etc.

And the Prior betook himself to the presentation which Thomas of Bredone, predecessor etc., made to the church of Osbert, his clerk; and he [the Prior] says that at the time of the presentation of the said Osbert, Richard son of Maud, grandfather of this Richard, was of full age and not within age; and this he is ready to aver etc.

And Richard says that Richard son of Maud, [his] grandfather, at the time of the presentation of Osbert, was within age; and of this he puts himself upon the country.

The jurors chosen by the consent of the parties say upon their oath that Richard son of Maud was within age at the time when Thomas of Bredon, predecessor etc., presented Osbert to the church.

Therefore it is awarded that Richard recover his presentation to the church against the Prior, and have a writ to the Bishop of Lincoln, the diocesan, [to the effect] that notwithstanding the reclamation of the Prior, he admit a fit person to the church at the presentation of Richard; and likewise that Richard recover against the Prior ten marks for his damages, [being] the value of a moiety of the church for a year etc., because the six months have not yet elapsed; and that the Prior be in mercy.

9. PLESELEY *v.* SPALDING.

In a *quid iuris* the tenant claims fee under a release with warranty made in a fine by the conusor's ancestor. *Qu.* whether the conusee may aver an earlier grant of the reversion made by that ancestor to the conusor with an attornment by the tenant.<sup>1</sup> *Held* that he cannot if he has no specialty.

## I.

One A. sued the *quid iuris clamat* against a woman by reason of a grant that William de Plecy made to the said A.

*Malberthorpe.* Nicholas de Plecy, father of William, whose heir [he is], by a fine levied etc. released and quitclaimed to us in our seisin all the right that he had or might have and bound himself and his heirs to warranty. And so we have the fee etc. Judgment whether upon any grant made by William, son of Nicholas, we ought to attorn.<sup>2</sup>

*Scrope.* Long before the fine was made this woman held of

<sup>1</sup> A headnote in one of our books answers this question in the affirmative, but see our note from the record.    <sup>2</sup> Observe the variant texts at this point.

de Plecy, quel William nous graunta, et demaundoms jugement. Estre ceo mesme<sup>1</sup> celui Nichol graunta la reversioun de ceaux tenemenz etc., et puis qe Nichol se avoit nettement demys du droit de la reversioun, jugement s'il pout après vostre estat enlanger et si vous ne devetz attorner.

*Malb.* Donques grauntez<sup>2</sup> bien qe Nichol piere William<sup>3</sup> nous releassa etc. et obliga luy etc. Mez s'il mesme fust en court etc. nous luy reboteroms, et<sup>4</sup> vous ne devetz estre de meillour condicioun etc.; jugement etc.

*Scrop.* Jeo n'ay mestier a graunter ne a dedire, qe jeo ne su partie. Mez del houre qe nous voloms averer qe longe temps avaunt la fyn dount vous parletz il graunta la reversioun a William<sup>5</sup> par quel<sup>6</sup> ele se attorna, par quel graunt le droit se esteynt en la persone Nichol et se vesti en William, et le quel William mesme le droit a nous graunta, jugement etc. si vous ne devetz attorner.

*Berr.* L'averement qe vous tendetz si est a voider la fyn, q'est un recorde,<sup>7</sup> a quel recorde nous devons doner plus de foy<sup>8</sup> qe a un dit. Mez par cas si vous eussez eu testimonie de vostre dit etc. nous irroms le plus près.<sup>9</sup> Mès greignour offens en ley serroit s'anyentir ceste fyn, q'est si solempne en luy mesme, qe a ouster vous de ceste averement ou vous n'avet fors vostre symple dit.<sup>10</sup>

*Malb.* Si Nichol piere William li eust disseisi<sup>11</sup> de certein<sup>12</sup> tenemenz et eust alyené et obligé luy et ces heirs a la garrauntie, il serroit barré. Mez nous ne luy voloms *tantum* barrer par la fyn etc. mez par l'un et l'autre.

*Scrop.* Non est simile, qar en vostre cas le piere fust seisi en temps del alienacioun etc. ou le fitz vivaunt luy pout<sup>13</sup> avoir eu soun recoverir. Mez en ceo cas en la persone Nichol rien ne luy demorra après ceo qu'il se avoit demys etc.<sup>14</sup> par le graunt fait a William etc. et la femme attourné par vertue de mesme le graunt etc.; et demaundoms jugement etc.

{*Scrop.*<sup>15</sup> Vers est si soun pere ly ust disseisi, par la garauntie serroit il barré. Ceo est pur sa possibilité q'il avoit. Mès qaunt J. pere W. graunta, nul riens demorra en sa persone issynt q'il pout aukun graunt fere etc.}

<sup>1</sup> jugement. *Scrop.* Mesme *D.*    <sup>2</sup> graunta *D.*    <sup>3</sup> *Ins.* vostre conissour *D.*  
<sup>4</sup> *Ins.* si *T*; *om.* *D.*    <sup>5</sup> *Om.* to after next William *T.*    <sup>6</sup> *Ins.* graunt *P.*    <sup>7</sup> *Ins.*  
 et un jugement *P.*    <sup>8</sup> fin *T.*    <sup>9</sup> nous irrames le plus bien prees *P.*    <sup>10</sup> vous  
 ne mostrez rien en evidence forqe vent *P.*    <sup>11</sup> rediss' *P.*    <sup>12</sup> ceux *P.*    <sup>13</sup> pur-  
 reit *D.*    <sup>14</sup> *Om.* etc. *D, T.*    <sup>15</sup> Substitute for the last speech, *P.*

William de Pleey; and he granted to us; so we pray judgment Besides, this Nicholas granted the reversion of these tenements etc.; and we pray judgment whether he could enlarge your estate after he had utterly demitted himself from the right of the reversion, and whether you ought not to attorn.

*Malberthorpe.* Then you concede that Nicholas, father of William, released to us etc. and bound himself etc. But if he himself were in court, we should rebut him, and you should be of no better condition. Judgment etc.

*Scrope.* I have no need to grant or deny [the release], for I am no party.<sup>1</sup> And we pray judgment whether you ought not to attorn, since we are willing to aver that long before the fine of which you speak [Nicholas] granted the reversion to William, upon which [grant you] attorned, and by which grant the right was extinguished in the person of Nicholas and was vested in William, who granted the same to us.

BEREFORD, C.J. The averment that you tender goes to avoid the fine, which is a record; and to that record we ought to give more faith than to a dictum. But perchance if you had had some testimony for your dictum, we should go more closely into the matter. But it were a greater offence in law to annul this fine, which is so solemn in itself, than to oust you from your averment where you have nothing [to show] but your bare word.

*Malberthorpe.* If Nicholas, father of William, had disseised [William] of certain tenements, and bound himself and his heirs to warranty, he [William] would be barred. But we would bar him not by the [release] alone, but by both [it and the warranty].

*Scrope.* Not a like case. In the case you put the father was seised at the time of the alienation, and there in [the father's] lifetime the son might have his recovery. But in the present case nothing remained in the person of Nicholas after he had demitted himself by the grant made to William and [after] the woman had attorned by virtue of that grant. So we pray judgment.

{*Scrope.*<sup>2</sup> True it is that if his father had disseised him, he [the son] would be barred by the warranty. That is by reason of the [possession] that [the father] had. But when William's father granted, nothing remained in his person in such wise that he could make any grant.}.

<sup>1</sup> Scrope represents the conusee in the fine that is being levied.

<sup>2</sup> One book substitutes this for the last preceding speech.

II.<sup>1</sup>

William de Pleslee porta le *quid iuris clamat* vers Agnes qe fuist la femme Johan Spaldynge assavoir quel droit ele cleyme en un mees etc., dount un R. ad granté la reversioun al dit W. et après la mort mesme cele Agnes.

*Malm.* pur Agnes. En droit de taunt ele cleyme fee par la resoun qe W. pere R., vostre conissour, en la seisine Agnes relessa tout le droit q'il avoit en taunt. Et issint cleyme ele fee.

*Scrop.* Ceo ne puist ele dire, qar W. pere R. graunta la reversioun de mesme cele terre a nostre conissour; par qele graunt ele se attourna de sa feauté; et cel estat continua si la qe le dit R. nous graunta la reversioun. Et ceo voloms averser.

*Malm.* Agnes ne s'attourna point par cel graunt; prest etc. Et qaunt al remenant une fyne se leva entre W. pere le dit R. en l'an etc. et la dite Agnes; ou le dit W. conisseit les tenemenz etc. estre le droit J., a tenir a J. et a Agnes et les heirs J. a tous jours, et obliga lui et ses heirs a la garrauntie. (Et sour ceo bouta avaunt fyn qe ceo tesmoigne.) Et demaundoms jugement si par nule conissaunce de R. fuiz le dit W., qi heir etc., encountre la forme de la fyne qe se leva entre W. et eux, qe voet garrauntie, devoms attourner.

*Scrop.* W. graunta ceste reversioun a R. soun fuiz nostre conissour longe temps avant ceste fyne levé; par queu graunt J. et A. sa femme s'attournerent a mesme cestui R.; par quel attournement le droit de la reversioun se vesti en la persone R. issint qe nul droit ne demorra en la persone W.: prest etc.: jugement etc.

*Ber.* Avietz ren de ceo graunt?

*Scrop.* Nous le voloms averrer, qar nous ne poms autre chose faire sy nous averrer le droit nostre conissour.

*Ber.* Il met avaunt une fyn, q'est de record en lui mesmes; et vous n'avietz qe vent; et grant meschief serroit de voider la fin. Par queu il semble a nous qe l'averrement encontre la fyne n'est pas resceivable. Mès si vous eussetz ren en poin qe tesmoigne vostre dit, nous le prendrons bien. Estre ceo yl vous bient barrer de la garrauntie.

<sup>1</sup> Text from B.



II.<sup>1</sup>

William de Pleslee brought the *quid iuris clamat* against Agnes, wife that was of John Spalding, to know what right she claimed in a messuage etc., whereof one R. had granted the reversion to the said William after the death of Agnes.

*Malberthorpe* for Agnes. As to certain [of the tenements] she claims fee, for W. father of R., your conusor, released all the right that he had in the same in the seisin of Agnes. And so she claims fee.

*Scrope*. She cannot say that, for W. father of R. granted the reversion of the same land to [R.] our conusor; upon which grant [Agnes] attorned for her fealty; and this estate she continued until R. granted us the reversion. And this we will aver.

*Malberthorpe*. Agnes did not attorn upon that grant. Ready etc. And as to the residue [of the tenements]<sup>2</sup> a fine was levied between W. father of R. and Agnes in such a year, whereby W. confessed the tenements to be the right of [John], to hold to [John] and Agnes and the heirs of [John] for ever, and bound himself and his heirs to warranty. (And thereupon he produced a fine which witnesses this.) And we pray judgment whether we ought to attorn upon any conusance made by R. son of the said W., whose heir [R.] is, against the form of the fine levied between W. [and John and Agnes] which comprises a warranty.

*Scrope*. W. granted this reversion to R. his son, our conusor, long before this fine was levied; and upon that grant [John] and Agnes his wife attorned to R.; and by this attornment the right of the reversion was vested in the person of R., so that no right remained in the person of W.; ready etc.; judgment etc.

BEREFORD, C. J. Have you anything [to show] for the grant?

*Scrope*. We will aver it, for we can do nothing else but aver the right of our conusor.

BEREFORD, C. J. He produces a fine, which itself is matter of record; and you have nothing but wind; and a great mischief it would be to avoid the fine. Therefore it seems to us that the averment is not receivable against the fine. But had you anything in your hand to prove your assertion, we would gladly receive it. Moreover, they seek to bar you [by] the warranty.

<sup>1</sup> This report appears in the Old Edition, p. 86.

<sup>2</sup> Really the two answers were given by different tenants.

*Ber.*<sup>1</sup> Averrement du pais suffit pur especialté entre estraunges. Jugement.

*Toud.* Si vostre pere vous eust disseisi et alienast a un estraunge et obligeast lui et ses heirs a la garrauntie et deviaist, vous serrez barré a toux jours par la garrauntie. Et sic ex parte ista.

*Scrop.* N'est mye semblable etc., qar en vostre cas moun pere avoit estat en la possessioun et vivant lui jeo averai moun recoverir par assise de novele disseisine. Mès en ceo cas nostre pere n'avoit rien en droit ne en franctenement. Ideo etc.

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 76, Lincoln.

Agnes of Spaldinge, William of Newtone and Cristiana his wife, in mercy for divers defaults.

The sheriff was commanded to cause Agnes to come here at this day, to wit, the quindene of St. Michael, to confess what right she claims in seven acres of land, one acre of meadow, and the moiety of a messuage with the appurtenances in Bilingburghe,<sup>2</sup> and [William and Cristiana] to confess what right William and Cristiana claim in three acres of land, one acre of meadow, and the moiety of a messuage in the same vill, which William son of Richard son of Nicholas of Bilingburghe ['the conusor'] has granted in the King's Court here to William of Plesele ['the conusee'] by a fine made between them.

And now come as well [the conusee] as Agnes, William and Cristiana, in their proper persons. And [the conusor] comes not.

And Agnes, being asked what right she claims in her said tenements etc., says that she claims right and fee in the same etc.; for she says that the tenements being in her seisin and that of John of Spaldinge sometime her husband, Richard son of Nicholas of Bilingburghe, father of [the conusor], whose heir he is, by his writing granted and for himself and his heirs for ever quitclaimed to John and Agnes and their heirs and their assigns the said tenements, to have and to hold to them and their heirs and their assigns for ever, of the chief lords of that fee, by the services due and accustomed, without any challenge by Richard, his heirs or assigns; and he bound himself and his heirs to warrant the tenements with the appurtenances to John and Agnes, their heirs and assigns, against all men for ever. And she proffers here the said writing under the name of Richard, father etc., which witnesses this, and its date is on [June 19, 1295] Sunday next before the feast of St. John Baptist in 23 Edw. [I.]. And thereupon she prays judgment.

And William and Cristiana being asked what right they claim in their said tenements etc., William says that he claims right and fee in them along with Cristiana his wife; for he says that aforetime in the court of

<sup>1</sup> *Corr.* Scrop. (P)

<sup>2</sup> Mod. Billingborough.

*Scrope*.<sup>1</sup> An averment by the country suffices as a specialty between strangers. Judgment.

*Toudeby*. If your father had disseised you and alienated to a stranger and bound himself and his heirs to warranty and had died, you would be barred for ever by the warranty. So in this case.

*Scrope*. Not a like case. In the case you put, my father had an estate in possession, and so while he lived I had my recovery by assize of novel disseisin. But in the present case our [conusor's] father had nothing in the right or the freehold. Therefore etc.

**Note from the Record** (*continued*).

Edward [I.] at York in the quindene of St. Michael in A.R. 32 [A.D. 1304] before Ralph of Hengham and his fellows, the King's justices, a fine<sup>2</sup> was levied between them, William and Cristiana, plaintiffs, and Richard son of Nicholas of Bilingburghe, father of [the conusor], whose heir he is, deforciant, of a messuage, sixteen acres of land, three and a half acres of meadow and five shillingworths of rent with the appurtenances in Bilingburghe, Birthorpe and Useby,<sup>3</sup> whereof the three acres of land, one acre of meadow, and the moiety of a messuage in Bilingburghe are parcel; and by that fine Richard confessed the tenements to be the right of William, and remitted and quit-claimed them for himself and his heirs to William and Cristiana and the heirs of William for ever, and also Richard granted for himself and his heirs that they would warrant the tenements with the appurtenances to William and Cristiana and the heirs of William against all men for ever etc. And he proffers a 'part' of the fine, which witnesses this. And thereupon he prays judgment etc.

And [the conusee], as to the charter which Agnes proffers here, says that by virtue thereof she cannot claim right or fee in the tenements, nor can she escape from being bound to attorn herself to him for the same; for he says that Richard son of Nicholas, father of [the conusor], from whom John of Spaldinge and Agnes held the tenements for their life, long before the making of the charter, granted to [the conusor] the reversion of the tenements, and that by reason of that grant John and Agnes thereof attorned themselves at Byllingburgh for their fealty to [the conusor before the making of the charter]; so he says that Agnes on the day of the said conusance, to wit, in three weeks from Easter last past, held the tenements of [the conusor]; and this he is ready to aver; and thereupon he prays judgment.

And Agnes says that neither John, sometime her husband, nor she ever attorned themselves to [the conusor] for their fealty etc., as [the conusee] says.

Issue is joined, and a *venire facias* is awarded for the quindene of Hilary.

Afterwards, the process between [the conusee] and Agnes having been continued to three weeks from Easter next following, Agnes offered herself

<sup>1</sup> Our only authority ascribes this speech to Bereford.

<sup>2</sup> The reference to the fine is Feet of Fines, Case 134, File 70, No. 48.\*

<sup>3</sup> Perhaps mod. Oasby in Haydon.\*

Note from the Record (*continued*).

on the fourth day against [the conusee]. And he came not. Therefore let Agnes go without day etc.

And as to the fine which William of Neutone and Cristiana proffer, [the conusee] likewise says that William and Cristiana by virtue of that fine cannot claim right or fee in their said tenements; for he says that Richard son of Nicholas, father of [the conusor], of whom William of Neutone and Agnes held the tenements for the term of their life, long before the levying of the fine granted the reversion of the tenements to [the conusor], and by reason of that grant William and Cristiana thereof attorned themselves to him for their fealty before the levying of the fine; and this he is ready to aver; and thereupon he prays judgment etc.

And William and Cristiana say that [the conusee] ought not in this case to be admitted to any averment by the country against the tenor of the fine, which fine bears record in itself, [and in which it is contained that Richard and his heirs are bound to warrant etc.<sup>1</sup>], especially as the [conusee]

10. HAUTERIVE *v.* PAINEL.

Replevine, ou piert que privé soy deschargera vers privé par statut, s'il ne puisse mostrer seisine devaunt le passage, tut die il qe l'auncestre morust seisi etc. après qy mort etc. Idem infra eodem anno fo. ij.

Replevine, ou l'avowerie fu faite pur sute, ou le pleintif mist avant le fait l'auncestre l'avowant par quel fait il fu deschargé; et au quel fait il fu chacé a respondre non obstante q'il avait esté mesme seisi de la sute etc. Mès il furent privee a d'ampartz etc.

I.<sup>2</sup>

Rauf de Paynel fust attaché a respoudre a William de Haute-riue par quey il avoyt pris ces avers etc.

*Denom* avoua etc. par la resoun qe mesme celuy B.<sup>3</sup> tient de nous taunt des tenemenz etc. par homage et feaulté et par les services de ij. souz par an et par siwte a nostre court de P. de treys semaines en treys semaines, des queux services nous fumes seisi par my sa mayn demene etc., et par <sup>4</sup> la siwte ariere etc. si avowoms etc.

*Malb.* Pur siwte ariere ne poiet avowrie faire, qar vostre ael, qi heir vous estes, dona lez tenemenz avaunt diz a un B. nostre besael, qui heir nous sumes, a tenir per les services d'un fee de chivaler quites de suyte. Jugement si pour suyte encountre le purporte de ceo fait peussez sur nous avowerie faire.

<sup>1</sup> Interlined.    <sup>2</sup> Text from *A*; compared with *D*, *T*. Headnotes from *A* and *D*.    <sup>3</sup> *W. T.*    <sup>4</sup> por *D*.



Note from the Record (*continued*).

shows no specialty (*speciale factum*) for the grant which he asserts that Richard son of Nicholas made to [the conusor] etc.

A day is given them to hear their judgment here at the said term [saving to the parties their reasons etc. on one side and the other<sup>1</sup>]; and [the conusee] is told, if he thinks expedient, to cause the [conusor] to come then and here.

Afterwards at that day came as well the [conusee] and [conusor] as William of Neutone and Cristiana in their proper persons; [and they instantly (*instante*) prayed judgment upon the above allegations etc.<sup>2</sup>]. And for that it seems to the court that in this case [the conusee and conusor] ought not to be admitted to any averment by the country against the tenor of the fine etc., especially as they show no specialty for their assertion (*dicto suo*) etc., it is awarded that William of Neutone and Cristiana go thence without day, and that [the conusee] take nothing by this conusance, but be in mercy.

10. HAUTERIVE *v.* PAINEL.<sup>3</sup>

Avowry for suit of court, the avowant alleging his own seisin by the hand of the plaintiff. The plaintiff pleads a charter of feoffment, without reservation of suit, made to his ancestor by the avowant's ancestor. The avowant is driven to allege a seisin before the time limited by Stat. Marl. c. 9, which gives the *contra formam feoffamenti*. Continuous seisin since the time limited by Stat. Westm. I. c. 39 and Stat. Westm. II. c. 2 would not suffice.

## I.

Ralph de Paynel was attached to answer William de Hauterive why he took his beasts etc.

*Denom* avowed etc., for the reason that this same [William] holds of us certain tenements etc. by homage and fealty and by the services of two shillings a year and by suit to our court of P. from three weeks to three weeks; of which services we were seised by his own hand etc.; and for the suit arrear etc. we avow [the taking].

*Malberthorpe*. For suit arrear you cannot avow, for your grandfather, whose heir you are, gave these tenements to one B. our great-grandfather, whose heir we are, to hold by the services of one knight's fee quit of suit. Judgment, whether you can avow for suit against the purport of this deed.

<sup>1-2</sup> Interlined.<sup>3</sup> This case may be Fitz. *Avowre*, 202.

*Denom.* Donqe conissez vostre<sup>1</sup> seisine; et ceo est un bref de possessioun ou statut doune de faire bone avowerie<sup>2</sup> puis la lymitacioun du bref de novele diseisine. Jugement si a ceste avowerie ne devetz respoudre.<sup>3</sup>

*Malb.* Est ceo le fait vostre auncestre ou noun?

*Denom.* Nous avoms avowé de<sup>4</sup> nostre seisine demene et de pusné temps, par quei au fait n'avoms mestier a respoudre.

*Berr.* Il ad avowé pur suyte arriere. Mez aultre serroit s'il avowast pur autre service. Par quei veez ou vous voletz demorer.

*Herle.* Par auneyene lay homme put bien avowrie faire pur seute de sa seisine demene, et par statut l'aunciene ley est restreynt et ousté le seynour q'il ne poet destreindre countre la fourme de feffement etc. et<sup>5</sup> pur suyte<sup>6</sup> si ly ne cez auncestres faire ne la soleient avaunt la<sup>7</sup> passage le Roy Henri en Bret[aine]. Et desicome nous avoms le fait vostre auncestre qe lymite servic[es] en certeyn par un fee de chivaler sauntz suyte faire, et vous ne poetz moustre que nous et nos auncestres<sup>8</sup> faire la soleimes avaunt la passage etc., jugement si encountre la forme del feffement vostre auncestre sur nous pour suyte peussez avowerie faire.

*Serop.* Avaunt statut en tiel cas le tenaunt ne se poet pas aultre voie descharger sy noun tauntsoulement par le *ne vices*; et a ouster cele duresce si fust le statut fait, et ordyné remedye q'est pluis covenable et pluis hastive remedye en tiel cas,<sup>9</sup> 'quod nullus distringatur contra formam etc.' Dount si vous volet estre eydé par statut, il vous estut user le remedye qe statut vous doune. Mez ore est issint en un prise dez avers q'est a<sup>10</sup> la comune ley, ou ley me doune bon avowrie de ma seisine demene ou de la seisine mez auncestres puis la lymitacioun etc. Jugement si a nostre seisine ne devez respoudre.

*Herle.* Seisine puis la lymitacioun poet estre heir<sup>11</sup>; veez cy cele seisin vous doigne tittle etc.

*Berr.* Statut veot qe la ou homme est feffé par chartre q'il ne soit destreint a suite faite<sup>12</sup> encountre la fourme de soun feffement s'il ou etc.; et il ad mys avaunt le fait vostre auncestre, par quel fait il est a descharg[er]<sup>13</sup> de suyte, et vous luy avet destreint encountre la forme, et *per consequens* vous luy avez fait tort. Pur

<sup>1</sup> nostre *D.*      <sup>2</sup> *Om.* Donqe . . . avowerie *T.*      <sup>3</sup> *Om.* two next speeches *T.*  
<sup>4</sup> sur *D.*      <sup>5</sup> *Om.* et *T.*      <sup>6</sup> *Om.* etc. et pur suyte *D.*      <sup>7</sup> le *D.*      <sup>8</sup> *Om.*  
auncestres *D.*      <sup>9</sup> *Ins.* ordeine *T.*      <sup>10</sup> en *D.*      <sup>11</sup> here *D*; heir *T.*      <sup>12</sup> faire  
*D*; fere *T.*      <sup>13</sup> est descharg' *D*, *T.*

*Denom.* Then confess [our] seisin. And this is a possessory writ, where statute<sup>1</sup> allows us to make avowry [at any time] since the limitation of the writ of novel disseisin.<sup>2</sup> Judgment, whether you ought not to answer to this avowry.

*Malberthorpe.* Is this the deed of your ancestor or not?

*Denom.* We have avowed upon our own seisin and of a later time. So we have no need to answer to the deed.

BEREFORD, C.J. He has avowed for suit arrear. It would be different if he avowed for any other service. So have a care about demurring.

*Herle.* By the old law a man might well avow for suit on his own seisin; and by statute<sup>3</sup> the old law is restrained and the lord is ousted from distraining for suit against the form of the feoffment, unless [the tenant] or his ancestors were wont to do the suit before the voyage of King Henry into Brittany.<sup>4</sup> And we pray judgment whether you can avow upon us for suit against the form of your ancestor's feoffment, since we have the deed of your ancestor, which limits the services in certain as those of a knight's fee without the doing of suit, and [since] you cannot show that we [or] our ancestors were wont to do it before the [said] voyage.

*Scrope.* Before the Statute in such a case the tenant could not discharge himself save only by the *ne [iniuste] vexes*. And to remove this hardship the Statute was made, and a remedy was ordained which is more convenient and speedy in such a case, namely, the *contra formam feoffamenti*. So if you wish to be helped by the Statute, it behoves you to use the remedy which Statute gives you. But here [we] are in a replevin action, which is at common law, where the law gives me a good avowry on my own seisin or that of my ancestors since the limitation.<sup>5</sup> Judgment, whether you ought not to answer to our seisin.

*Herle.* Seisin since the limitation may be of yesterday.<sup>6</sup> Look well whether such a seisin would give you title.

BEREFORD, C.J. Statute<sup>7</sup> says that where a man is enfeoffed by charter he is not to be distrained to do suit against the form of his feoffment, unless he or [his ancestors] etc. And he has put forward the deed of your ancestor; and by it he is discharged of suit. And you have distrained him against the form [of the deed]; and con-

<sup>1</sup> Stat. Westm. II. c. 2.

<sup>2</sup> Stat. Westm. I. c. 39, fixing the voyage to Gascony in 1242 as the limit.

<sup>3</sup> Stat. Marl. c. 9.

<sup>4</sup> In 1230.

<sup>5</sup> The voyage to Gascony in 1242.

<sup>6</sup> Taking *heir* or *here* to represent *hier*.

<sup>7</sup> Stat. Marl. c. 9.

ceo nous vous demaundoms : fustes vous seisi de la seute avaunt le temps etc. ou noun ?

*Scrop.* Si jeo feusse chacé a respoudre a ceo la ou nostre avowrie est meyntenu par le seconde estatut de Westmoustier qe poet<sup>1</sup> etc. issint ensuereit<sup>2</sup> qe l'un estatut defreit l'autre.<sup>3</sup>

*Pass.* Nostre piere seisi et nous mesmes etc. issint q'il ne pount attacher en nostre persone nul tort, mez tauntsoulement une continuaunce del estat nostre piere.

*Berr.* Si vostre piere accroche une suyte encountre lay et vous avet continué cel tort, entendet qe cel tort demurra despuny et la continuaunce vous durra title (*quasi diceret non*) ? Par quei responez al fait.

*Denom.* Il dient qe nostre auncestre dona a lour auncestre etc. Moustrent coment il sount auncestres d'une part et d'autre.

Et sic fecerunt. Et les aultrez<sup>4</sup> furent tresaelz adampartz.

*Ad alium diem Scrop.* Sire, nous avoms dit qe nostre piere fust seisi et morust seisi etc., dount nous averoms le mort d'auncestre de la mort nostre piere de la rente, et de nostre seisine demene bref de novele disseisine, et as brefs des custumes et dez services nous serroms r[eceus] de nostre seisine demene et a joyndre bataille et graunt assise. Jugement si a ceste possessioun ne deyve respoudre.

*Berr.* Vostre fait q'il boute encountre vous luy descharge si vous ne poez moustrer seisine etc. avaunt la lymitacioun ; et en taunt qe vous ly avez destreint de choce de quei vostre fait l'aquite, en taunt l'avet fait tort. Par quei etc.

*Scrop.* Si jeo destr[eigne] mon tenaunt par bestes de sa carue ou jeo purrei aver trové aultre destresce et il face la<sup>5</sup> delivraunce et plede ovesque moy a la comune lay, jeo avowerai<sup>6</sup> sur luy pur services ariere et il en repliaunt die qe jeo poi<sup>7</sup> aultre destresce avoir trové par quei dez bestes de sa carue ne pusse jeo avower par statut etc. et<sup>8</sup> par taunt ne me oustera il mye de ma avowerie q'est a la comune lay, et nomement ou son recoverir luy est reservé par bref de statut acordaunt a sa replicacioun. Auxi de cea.<sup>9</sup> Coment q'il allegge fait qe luy deschargera<sup>10</sup> a soun dit, depuis qe nous sumes cy a la comune ley ou bien<sup>11</sup> me list etc. et ou il se poet descharger par le remedye qe douné luy est par le statut, n'entendoms mye q'il nous<sup>12</sup> pusse de ceste avowerie ouster.

<sup>1</sup> poit *T*; voet *D*.    <sup>2</sup> issuereit *T*.    <sup>3</sup> un autre *D*.    <sup>4</sup> aunt *D*; autres *T*.  
*Corr.* auncestres.    <sup>5</sup> autre *T*.    <sup>6</sup> awowe *D*.    <sup>7</sup> poei *D*; pooi *T*.    <sup>8</sup> *Om.*  
 et *D*.    <sup>9</sup> ceo *T*.    <sup>10</sup> descharge *D*, *T*.    <sup>11</sup> beau *D*.    <sup>12</sup> vous *D*.



sequently you have done him wrong. So we ask you: Were you seised of the suit before the time etc. or not?

*Scrope.* If I were driven to answer to that, when our avowry is maintained by the Statute of Westminster II. which [says] etc., then it would follow that one Statute would defeat another.

*Passeley.* Our father was seised, and we ourselves were seised, so that they cannot lay any tort in our person, but only a continuance of our father's estate.

BEREFORD, C.J. If your father encroached a suit against law, and you have continued that wrong, think you that wrong shall remain unpunished and that the continuance will give you title? Not so. Therefore answer to the deed.

*Denom.* They say that our ancestor gave to their ancestor etc. Let them show how [these people] on both sides were ancestors.

And this they did; and the ancestors<sup>1</sup> on both sides were great-great-grandfathers.

On another day *Scrope*: Sir, we said that our father was seised and died seised etc., so that we should have a mortdancestor on our father's death for this rent, and a novel disseisin on our own seisin; and to writs of customs and services we should be received on our own seisin, and we might join battle and the grand assize. Judgment, whether he ought not to answer to this possession.

BEREFORD, C.J. The deed that he produces against you discharges him unless you can show seisin before the limitation. And inasmuch as you have distrained him for a thing from which your deed acquits him, you have done him a wrong. Therefore etc.

*Scrope.* If I distrain my tenant by his beasts of the plough where I might have found other distress, and if he makes the deliverance and pleads with me at the common law, and if I avow upon him for services arrear and he in replying says that I might have found other distress, so that by Statute<sup>2</sup> I cannot distrain by beasts of his plough, then, for all this, he will not oust me from my avowry which is at the common law, especially as his recovery is secured to him by a statutory writ in accordance with his replication. So in this case. Albeit he alleges a deed which, so he says, will discharge him, we do not think that he can oust us from this avowry, since we are here at the common law where it is lawful for me [to avow on my seisin], and since he can discharge himself by the remedy given him by the Statute.<sup>3</sup>

<sup>1</sup> See our conjectural reading.

<sup>2</sup> *Stat. de districtione Scaccarii*. See p. 61 below.\*

<sup>3</sup> Namely, the *contra formam*.

*Berr.*<sup>1</sup> Statut voet 'quod nullus distr[ingatur] contra formam etc. nisi ipsi<sup>2</sup> quorum antecessores etc.' Par quei nous agardomps qe vous respoignez al fait.

*Denom.* Seisi avaunt le passage etc.

Et alii econtra. Ideo ad patriam.

## II.<sup>3</sup>

Rauf Paynel avowa sur W. de Hauter[ive] pur seute.

*Toud.* Nostre auncestre feffé par vostre auncestre par ceste chartre etc. a tenir pur tous services. Jugement si pur seute etc.

*Scrop.* Nostre pere, qy heir etc., et nous seisi etc. de seute qe prove nostre plè bon en ceo bref<sup>4</sup> de possessioun.

*Toud.* Statut nous eyde qe<sup>5</sup> nous descharge etc. si vous ne pusset dire etc. qe seisi devaunt le passage le Roy H[enri] en B[retagne].

*Scrop.* Seisi pus le temps limité du bref de novele disseisine, qe<sup>6</sup> doné est par statut de fere bone avowerie.

*Berr.* Si de tiel temps soit doné etc. en coustemes et services autrez qe de seute, pur ceo n'est il pas doné de seute, de qey est doné statut especial.

*Herle.*<sup>7</sup> Si voillent estre eidé par statut, il sut qe par remedie qe lour est doné par statut.

*Malm.* Jugement si encountre le fet vostre auncestre pusset ceste destresce avowere.

*Ber.* Fetes le auncestre.

*Malm.* ly fyt besael a ly a qy la chartre fust fet et cely qe fist la chartre besael al destr[einaunt].

*Pass.* Si vous agardez<sup>8</sup> nous r[espondroms] de plus longe temps.

*Hervi.* Nous le vous dioms pur ley.

*Ber.* Oil, et pur ley le voloms user.<sup>9</sup>

*Pass.* Seisi avaunt le passage etc. en B[retagne].

Et alii econtra.

## III.<sup>10</sup>

Rauf Paiel porta soun replevine vers W. Latimer et dit qe a tort avoit pris ses avers.

*Denum* avowa etc. pur ceo qe Rauf tient un mees de lui et iiij. carués de terre en C. par homage, feuté et par un demi fee de

<sup>1</sup> *Ins.* ut supra *D, T.*    <sup>2</sup> *ipsum T.*    <sup>3</sup> Text from *R*; compared with *M.*  
<sup>4</sup> prove vostre en ce play *R*; text from *M.*    <sup>5</sup> et *M.*    <sup>6</sup> no. dis. de quele seisine *M.*  
<sup>7</sup> *Om.* speech *R*; *ins.* *M.*    <sup>8</sup> *Ins.* qe *R.*    <sup>9</sup> *Ins.* taunt com nous pooms *M.*    <sup>10</sup> Text from *B.*

BEREFORD, C.J. Statute says that none be distrained against the form [of his feoffment] unless they [or] their ancestors [were wont] etc. Therefore we award that you answer to the deed.

*Denom.* Seised before the voyage [to Brittany].

Issue joined. And so to the country.

## II.

Ralph Paynel avowed upon W. de Hauterive for suit.

*Toudeby.* Our ancestor was enfeoffed by your ancestor by this charter, to hold [by certain services] for all services. Judgment, whether [you can avow] for suit.

*Scrope.* Our father, whose heir [we are], and we ourselves were seised of suit, which proves our plea good in this possessory writ.

*Toudeby.* Statute<sup>1</sup> aids us, for it discharges us if you cannot say that you were seised before the voyage of King Henry into Brittany.

*Scrope.* Seised since the time limited for the writ of novel disseisin, which [time] is given by Statute for making a good avowry.<sup>2</sup>

BEREFORD, C.J. If that time is given in respect of customs and services other than suit, it is not therefore given in respect of suit, about which there is a special Statute.

*Herle.* If they wish to be aided by Statute, it follows [that this should be] by the remedy given them by Statute.<sup>3</sup>

*Malberthorpe.* Judgment, whether you can avow this distress against the deed of your ancestor.

BEREFORD, C.J. Make him ancestor.

*Malberthorpe* made the donee of the charter great-grandfather, while the maker of the charter was great-grandfather of the distrainor.

*Passeley.* If you so award, we will answer for a longer time.

STANTON, J. We tell you that for law.

BEREFORD, C.J. Yes, and for law we will hold it [as long as we can].

*Passeley.* Seised before the voyage to Brittany.

Issue joined.

## III.<sup>4</sup>

Ralph Painel brought his replevin against [William de Hauterive] and said that wrongfully he took his beasts.

*Denom* avowed etc. for that Ralph holds of him a messuage and four carucates of land in C. by homage, fealty, and [the services of]

<sup>1</sup> Stat. Marl. c. 9.

<sup>2</sup> Stat. Westm. I. c. 39; Westm. II. c. 2.

<sup>3</sup> The *contra formam feoffamenti*.

<sup>4</sup> This report is given in the Old Edition, p. 88.

chivalier et par siwte a sa court de B. de iij. symeines etc. ; des queux services etc. ; et pur siwte arriere si avowe etc.

*Fr.* Les tenemenz furent en la seisine un A., qi heir vous estes, qe fuist vostre auncestre, qe de ceo enfeffa un J. nostre auncestre, qi heir nous sumes, a tenir franchement et quitement par les services d'un fee de chivalier pur toux services saunz sute faire. Jugement si encountre le fait vostre auncestre puissetz destresce avower. (Et myst avaunt fait qe ceo tesmoigna.)

*Denum.* R[espone]z a nostre seisine.

*Fr.* Vous ne poietz destresce avower encountre le fait vostre auncestre pur services nient compris deinz le fait.

*Denum.* Si vous tenez la prise torcenouse, aidetz vous par bref foundu sur statut.

*Ber.* Il est autre de siwite qe n'est d'autre services corporeles. Et pour ceo, puis qe vous estes soun heir, qi fet etc., qe donna ceux tenemenz pur certeinz services, avisetz vous si pur services nient comprises deinz le feffement puissetz avower.

*Herle.* Al aunciene lei, tout fuist un home par sa chartre quitez de sute, il covendroit respondre a la seisine ; la quele duresse est restreint par statut s'il ne puist prendre title de plus haut temps qe douné lui est par statut, scilicet, 'quod ipsi vel antecessores sui eam facere consueverunt ante primam transfretacionem domini H[enrici] Regis in Britanniam.' Jugement si a vostre seisine, si vous ne moustrez title de plus haut, eyoms mestier a respondre.

*Scrop.* Nous avoms avowé solonc comun lei de nostre seisine demene. Dount si vous voille estre deschargié, il vous covent user le bref qe vous est douné en le cas foundu sour statut 'quod nullus distringatur contra formam feoffamenti etc.'

*Scrop.* En cas qe homme lui veot deschargier de sute yl y ad diverse manere de remedie : scilicet, la ou homme acroche a lui siwite puis la limitacion de bref de novele diseisine, si puist homme estre deschargié par plee de prise des avers, qe veot estre pledié par gage et plege ; et si homme eit acrochié sute avaunt la lymytacion, il covyent q'il se aide par bref foundu sour statut ; et si sa seisine est d'eyné temps come avaunt le passage le Roi H[enri] en B[retagne], il ne se puist deschargier si noun par remedie qe douné lui est par comune lei, c'est assavoir par le *ne vexes*. Et pour ceo aviesetz vous queux de ceux deux voillez pleder.

*Herle.* Nous avoms mys avaunt le fait soun auncestre, par quel



half a knight's fee and by suit to his court of B. from three weeks etc.; of which services etc. And for suit arrear he avows etc.

*Friskenev.* The tenements were in the seisin of one A., whose heir you are, [and] who was your ancestor; and he enfeoffed thereof one J. our ancestor, whose heir we are, to hold freely and quietly by the services of one knight's fee for all services without doing suit. Judgment, whether you can avow a distress against your ancestor's deed. (He produced a deed which witnessed this.)

*Denom.* Answer to our seisin.

*Friskenev.* You cannot, against your ancestor's deed, avow a distress for services not comprised in the deed.

*Denom.* If you think the taking wrongful, aid yourselves by a writ founded on the Statute.

BEREFORD, C.J. It is otherwise with suit to what it is with other corporal services. Therefore, as you are the heir of the man whose deed is [produced, and] who gave these tenements for certain services, be well advised whether you can avow for services not comprised in the feoffment.

*Herle.* Under the old law, although a man was quit from suit by his charter, he had to answer to the seisin. And this hardship is restrained by Statute,<sup>1</sup> unless [the distrainor] can take title from a higher time than is assigned in the Statute: to wit 'that they or their ancestors were wont to do it before the first voyage of King Henry into Brittany.' Judgment, whether we need answer to your seisin, if you do not show title higher up.

*Scrope.* We have avowed according to common law on our own seisin. So, if you would be discharged, you ought to use the writ given to you by Statute in your case: namely, the *contra formam feoffamenti etc.*

SCROPE, J. If a man desires to discharge himself from suit, there are divers kinds of remedy: to wit, where suit is encroached since the limitation of the novel disseisin, he may be discharged by a plea of replevin, which is to be pleaded by gage and pledge; and if the suit is encroached before the limitation, a writ founded on the Statute should be used; and if the seisin [of the suit] is of [yet] earlier time, and before the voyage of King Henry into Brittany, he can only discharge himself by the remedy given him by the common law, namely the *ne vexes*. So be advised as to which of these two you will plead about.

*Herle.* We have produced the deed of his ancestor, and thereby

<sup>1</sup> Stat. Marl. c. 9.

fait nous ne sumes tenuz a nule sute faire. Et il ne lie pas si haut sa seisine qe douné lui est par lei etc. a destreindre et avowere encountre la fourme de son feffement. Jugement.

*Pass.* En affermaunt nostre avowéré vous dyoms qe nostre piere fuist seisi et morust seisi de cele sute par la mayn vostre pere, et nous après par vostre mayn. Jugement si nostre seisine ne soit assetz bon, qar mesqe moun auncestre l'eust acroché a tort et de ceo morust seisi, homme ne purra mie dire qe ma seisine fuist torcenouse ne jeo n'averai nule penaunce.

*Ber.* Si averetz, et plus tost en ceo caas q'en nul autre cas de ley.

*Scrop.* Si ceo fuist une rente service, et mon pere eust devié seisi, jeo averai mon recoverer par le mortdauncestre mesq'il le eust acroché a tort et encountre la fourme de soun feffement. Et sic ex parte ista. (Ad idem.) Si homme prenge mes bestes de ma carue et mes berbitz encountre fourme de statut ou doné m'est remedie par bref foundu sour statut, et jeo face la deliverance solome comune lei et plede a une prise des avers, entrelessaunt remedie qe douné moy est par lei en ceo cas, et celui qe les prent en ceo cas avowe pur services qe arriere lui sount, et jeo dy qe ceste prise ne puist il avower, par la r[eson] qe statut veot qe nul soit destreint etc. taunt come homme puist trover autre destresce, jeo ne crei mye qe ceste exception doit descharger, ne, si ele soit usé, la excepcion ne me doit valer etc.

*Berr.* Geffrei, merci (*quasi diceret* Vous dites mal) !

*Denom.* En ceo cas qe nous sumes nous sumes actours et eux deffendants. Par quei s'ils voillent estre deschargietz il covient q'il dient q'il ount esté quites de cele sute de temps de limitacion<sup>1</sup> del estatut de Marl[eberge] 'de sectis,' et noun pas a nous a dire qe nous sumes seisi de temps etc.

*Ber.* Voilletz vous autre chose dire ?

*Scrop.* Nous et noz auncestres seisi par my la mayn lour auncestre de temps dount bref de novele disseisine court : prest etc.

*Herle.* Quei devaunt ?

*Scrop.* A ceo n'avoms mestier a respondre, qar mesqe jeo fuisse seisi devaunt, jeo ne purray mie de plus haut destresce ne avowéré faire. Et pour ceo voilletz cest averrement ?

<sup>1</sup> certificacioun *B.*

we are not bound to do any suit. And he does not lay his seisin so high up as the law prescribes for him if he would distrain against the form of his feoffment. Judgment.

*Passeley.* In confirmation of our avowry, we tell you that our father was seised and died seised of this suit by the hand of your father, and afterwards we [were seised] by your hand. Judgment, whether our seisin be not good enough; for, although my ancestor had wrongfully encroached [the suit] and died seised, no one could say that my seisin was wrongful, and I should have no punishment.

BEREFORD, C.J. Yes you would, and sooner in that case than in any other case in law.

*Scrope.* If this was a rent service, and my father had died seised, I should have my recovery by the mortdancestor, although he had encroached [the suit] wrongfully and against the form of his feoffment. So here. (To the same effect.<sup>1</sup>) If a man takes my beasts of the plough and my sheep against the form of the Statute,<sup>2</sup> where a remedy is given me by a writ founded on the Statute, and I make a deliverance of them according to the common law and plead in a replevin, leaving on one side the remedy given me by law in that case, and the taker avows for services arrear, and I say that he cannot avow that taking, as Statute says that none be distrained [by his beasts of the plough] so long as other distress can be found, I do not believe that this plea ought to discharge me, or would avail me if I made use of it.

BEREFORD, C.J. Thank you, Geoffrey<sup>3</sup> (*meaning*—You are wrong).

*Denom.* In this case we are plaintiffs, and they are defendants.<sup>4</sup> So, if they wish to be discharged, they ought to say that they have been quit of the suit from the time of limitation fixed by the Statute of Marlborough 'of suits'; and it is not for us to allege that we were seised [before that time].

BEREFORD, C.J. Have you anything else to say?

*Scrope.* We and our ancestors were seised by the hand of their ancestors from the time from which the writ of novel disseisin runs:<sup>5</sup> ready etc.

*Herle.* What about the earlier time?

*Scrope.* To that we need not answer; for, even if I were then seised, I could not make distress or avowry [in reliance on] so ancient a time. So will you receive this averment?

<sup>1</sup> Possibly the name of another advocate has dropped out at this point.

<sup>2</sup> *Stat. de districtione Scaccarii*, placed among the statutes of uncertain date in the *Statutes of the*

*Realm* (i. 198).\*

<sup>3</sup> Geoffrey Scrope.

<sup>4</sup> After avowry the avowant is quasi-plaintiff.

<sup>5</sup> From 1242.

*Herle.* Ceo purrai estre d'un jour passé.

*Ber.* Nanil, mès de temps de lymitacion tantq'il vous destr[eint] par vostre defaute saunz interrupcioun.

*Scrop.* Nous et nos auncestres seisi saunz interrupcioun puis la lymitacioun du bref de novele disseisine.

*Toud.* Nous sumes en cas de statut, qe veot 'quod nullus distringatur contra formam feoffamenti nisi ipsi et antecessores sui etc. avaunt la passage le Roi H[enri] en Brittaigne.' Par quei nous entendoms q'il covient qe vous dietz qe vous fuistes seisi avaunt.

*Stauntone.* Il covient qe vous r[espondez] a ceo.

*Pass.* Si vous le diez pur lei nous r[espondrons] assez.

*Stauntone.* Nous vous dioms pur lei pur vivre et morir.

*Pass.* Seisi avaunt la passage: prest etc.

Et alii econtra.

#### IV.<sup>1</sup>

W. de Auterive se plaint qe Raufe Paynel atort prist ses avers.

*Scrop.* Raufe avowe la prise bone e droiturele par la r[eson] qe il tient de lui le manoir de C., dount le lieu ou la prise fust etc., par homage, fealté e par suite a sa court de N. de iij. semeines en iij. semeines; des queux services il fut seisi par mi sa main, com par mi la main son verray tenant. E pur la suite arere de un demi an devant le jour de la prise, issi etc.

*Herle.* Nous dioms qe W. Paynel tresael mesme cestui R[aufe], qi heir etc., fut seisi de ceo manoir; qe hors de sa seisine enfeffa R. de Auterive nostre ael, qi heir nous sumes, par les services de un fee de chivaler pur touz services par ceo fet qe cy est. (E mist avant chartre a la court qe ceo tesmoigne.) E demandoms jugement si encontre le fet sun auncestre pur suite arere puisse avoverie faire.

*Scrop.* A la comune lei de ceste avoverie vous nous ne puissez oustier ne par statut. Jeo le vous proefs; car coment qe statut dit qe nul ne soit distreint encontre la forme de son feffement, a cel statut lui ad<sup>2</sup> certain bref doné, sanz user tieu bref. Jugement etc. si a defere nostre avoverie qe est en la possession devez avenir.

*Herle.* Comune lei voet qe nul ne face altre service qe faire ne doit; e le statut voet 'quod nullus distringatur etc.'

<sup>1</sup> Text from Y (f. 173).

<sup>2</sup> Corr. il y ad.



*Herle.* The seisin you aver might be for just one day.

BEREFORD, C.J. No, but uninterruptedly from the time of limitation until he distrained for your default.

*Scrope.* We and our ancestors were seised without interruption from the limitation of the writ of novel disseisin.

*Toudeby.* We are in the case of the Statute, which says that 'none be distrained against the form of his feoffment unless he and his ancestors etc. before the voyage of King Henry to Brittany.' So we hold that you ought to say that you were seised before that [voyage].<sup>1</sup>

STANTON, J. You must answer to that.

*Passeley.* If you say that as law, we will give answer enough.

STANTON, J. We say that as law, for life and death.

*Passeley.* Seised before the voyage : ready etc.

Issue joined.

#### IV.

W. de Hauterive complains that Ralph Painel wrongfully took his beasts.

*Scrope.* Ralph avows the taking good and lawful for the reason that [William] holds of him the manor of C., whereof the *locus in quo* [is parcel], by homage and fealty and by suit to his court of N. from three weeks to three weeks, of which services [Ralph] was seised by [William's] hand as by the hand of his very tenant. And for the suit arrear for half a year before the day of the taking [he avows] etc.

*Herle.* We say that W. Painel, great-great-grandfather of Ralph, whose heir he is, was seised of this manor, and out of his seisin enfeoffed R. de Hauterive our grandfather, whose heir we are, for the services of one knight's fee for all services, by this deed which is here. (And he produced to the court a charter which witnesses this.) And we pray judgment whether he can avow for suit arrear against the deed of his ancestor.

*Scrope.* You cannot oust us from this avowry at common law or by Statute. I will prove it to you ; for, though Statute says that no one is to be distrained against the form of his feoffment, a certain writ has been given upon this Statute,<sup>2</sup> and not the use of this writ. Judgment, whether you ought to defeat our avowry which is in the possession.

*Herle.* The common law wills that no one do to another service that he does not owe, and the Statute says that none be distrained etc.

<sup>1</sup> In 1230.

<sup>2</sup> The *contra formam feoffamenti*.

*Ber.* Grantez la seisine, e veez après si ele soit droiturele ou torcenouse.

Alio die fut chacé a respondre au fet sun auncêtre.

*Scrop.* dixit ut prius.

*H. Scrop.* Vous lour volez charger par la r[eson] qe vostre avowerie chiet en la possession. E en chescone avowerie si est possession e droit. E sanz ceo qe vostre avowerie ne soit a defere lour droit e a defere owelement lour title q'il mettent avant en anentissement de lour<sup>1</sup> avowerie, vous ne devez estre receu.

*W. Denh.* Certain temps de avowerie faire si est doné par statut. Mès nous voloms averer qe nous fumes seisi pus le statut.

*Ber.* Vostre dit n'est pas plein a charger eux sanz ceo qe vous ne diez qe vous e vos auncestres avez esté seisi pus le temps limité sanz interrupcion.

Alio die *Bereford.* Vous avez dit qe vous e vos auncestres seisi pus le temps limité, qe est doné par le statut de Westm[oustier] le seconde, qe est pus limitacion del bref de novele disseisine. Mès veoms qe statut ouste les torcenouses destresces pur suites e services. Jeo entenke qe le statut de Marleberge, qe dit qe nul soit destreint pur suite ou pur autre service fere encontre la forme de son feffement. Vous ne r[esponez] nent a cel statut. Par qei vostre r[espouns] est tut nue.<sup>2</sup>

*Scrop.* Nous dioms qe nous e noz auncestres [sumes] seisi de cele suite devant le passage le Roi H[enri] en Bretagne : prest etc.

Et alii contrarium.

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 113, Linc.

Ralph Paynel was summoned to answer William de Alta Ripa of a plea wherefore he took William's beasts and unlawfully detained them against gage etc. And thereupon William complains that on [9 Dec. 1308] Monday next after the feast of St. Nicholas in A.R. 2 in the vill of Manneby<sup>3</sup> before William's door in the common street, Ralph took a horse of William's, and on [15 Jan. 1309] Wednesday next after the feast of St. Hilary in the said year in the same vill of Manneby, in a place called Westholmes, he took another horse of William's, and impounded the said beasts and in pound detained them against gage etc., until etc.: damages, twenty pounds. And thereof he produces suit.

And Ralph, by his attorney, comes and defends tort and force, when etc. And as to the first taking of a horse, he says that he did not take it in the

<sup>1</sup> *Corr.* vostre.    <sup>2</sup> *Or* mie.    <sup>3</sup> Mod. Manby in Broughton near Brigg.

BEREFORD, C.J. Admit the seisin, and afterwards see whether it be rightful or wrongful.

On another day [Ralph] was driven to answer to his ancestor's deed.

*Scrope* repeated what he had said.

H. SCROPE, J. You desire to charge them because your avowry lies in the possession. [But] in every avowry both right and possession are present. And you cannot be received, unless your avowry goes to defeat their right and likewise to defeat their title which they put forward in annulment of [your] avowry.

*W. Denom.* A certain time is given by Statute for the making of an avowry. We wish to aver that we were seised after the [time<sup>1</sup> fixed by] Statute.

BEREFORD, C.J. What you say is not full enough to charge them, unless you say that you and your ancestors have been seised since the time of limitation without interruption.

On another day BEREFORD, C.J. You have said that you and your ancestors were seised since the time of limitation fixed by the Statute of Westminster II.: that is, since the limitation for the writ of novel disseisin. But let us see what Statute ousts wrongful distresses for suit and services. I think it is the Statute of Marlborough, which says that none be distrained to do suit or other service against the form of his feoffment. To that Statute you do not answer. So your answer is quite nude.

*Scrope.* We say that we and our ancestors were seised of this suit before the voyage of King Henry into Brittany.<sup>2</sup> Ready etc.

Issue joined.

#### Note from the Record (*continued*).

common street etc., but in a place that is called le Grene atte Touneshende outside the common street. And of this he puts himself upon the country.

Issue is joined.

But as to the other taking etc., Ralph avows it good: and lawfully, for he says that William holds of him seventeen messuages and four carucates of land with the appurtenances in the said vill (*villa*) of Manneby and Bergh,<sup>3</sup> by homage and fealty and the service of forty shillings to the King's scutage of forty shillings, and so in proportion, and of doing suit to Ralph's court of Berghton<sup>4</sup> from three weeks to three weeks, and of these services and suit etc. Ralph himself was seised by the hands of William; and because the said suit was arrear for two years before the day of the taking etc., he took the horse in the said place, in his fee etc. (*Note continued on next page.*)

<sup>1</sup> In 1242.

<sup>2</sup> In 1230.

<sup>3</sup> Perhaps this is an error for Berghton.\*

<sup>4</sup> Mod. Broughton.

Note from the Record (*continued*).

And William says that Ralph cannot avow the distress good for [a] suit etc. ; for he says that one Alexander Paynel, ancestor of Ralph, whose heir he is, out of his seisin enfeoffed one William de Alta Ripa, ancestor of William, whose heir he is, of the whole vill of Manneby with the appurtenances, whereof the *locus in quo* is part, to hold to him and his heirs, of Alexander and his heirs, by the service of one knight for all service etc., by his, Alexander's, charter (which he proffers and which witnesses this etc.) ; wherefore—since in the statute of Henry [III.] it is contained that no one enfeoffed etc. by charter be distrained to do suit to the court of his lord unless he is bound to do that suit by the form of the feoffment etc., or he or his ancestors were wont to do that suit before the first voyage of the same King Henry into Brittany<sup>1</sup>—he prays judgment whether Ralph can avow that taking lawful for the said suit.

And Ralph says that he was seised of the suit by William's hands as aforesaid, and likewise all his ancestors were seised of the same suit to be done by the hands of William's ancestors from the time of the said voyage ; and this he is ready to aver ; and, since it is not lawful in writs of this kind to avow distresses of (*de*) a more ancient seisin than from the time limited

11. THORGRIM *v.* HEREFORD (BISHOP OF).

Replevine, ou abbé mist avaunt relees du predecessour l'evesque par assent de chapitre ; ou piert q'il covent respoudre al fait ou mostrer title plus tardif.

Replevine et avowerie faite pur rente service, ou le plentif mist avant le fait le<sup>2</sup> predecessour l'avowant fait a son feffour qui estate il avoit, et le quel fait lui descharga de une partie des services, pur quey etc. ; ou l'avowant lia sa seisine e la seisine son predecessour ; a quei il ne poet estre respondu ; mès lui voleit chacer a respondre al fait son predecessour. Et remanet.

I.<sup>3</sup>

L'Evesque de Hereforde fust attaché a respoudre a Richard Abbé de Thurg[artone] de plee pur quei il avoyt pris cez avers etc.

*Herle* avowa la prise etc. par la resoun qe mesme celuy Abbé tient de luy certeynz tenemenz par fealté et par services de x. souz par an, des queux services il mesme<sup>4</sup> seisi par my la mayn mesme celuy Abbé com par etc., et pur xxxv. souz arere<sup>5</sup> de iij. aunz et demy avaunt le jour de la prise etc.

<sup>1</sup> The word 'Brittanniam' is written over an erasure.    <sup>2</sup> al *D.*    <sup>3</sup> Text from *A* : compared with *D*, *T* *P.*    Headnotes from *A* and *D.*    <sup>4</sup> *Ins.* fut *T*, *P.*  
<sup>5</sup> *Om.* to after next ariere *D.*



Note from the Record (*continued*).

etc., to wit, the time of the voyage of Henry III. into Gascony, he prays judgment etc.

Afterwards Ralph says that he ought not to be prejudiced by the charter from making distresses for the suit etc.; for he says that his ancestors were seised of the suit to be done to his court in form aforesaid before the voyage to Brittany; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the octave of Hilary.

Afterwards, in the quindene of Easter, A.R. 5, came the parties here by their attorneys, and likewise the jurors chosen by consent of the parties, who say upon their oath that, as to the first taking of a horse, the horse was taken in the said place called le Grene atte Touneshende in his [Ralph's] fee and not in the common street; and as to the other taking, they say that Ralph's ancestors were seised of the suit of William's ancestors to the said court before the said voyage.

Therefore it is awarded that Ralph go thence without day, and that William take nothing by this jury, but be in mercy for a false claim. And let Ralph have a return of the beasts etc.

11. THORGRIM *v.* HEREFORD (BISHOP OF).<sup>1</sup>

Bishop by deed with consent of Chapter releases to a tenant, his heirs and assigns, part of the rent service. Tenant's heir enfeoffs X. to hold of chief lord. *Qu.* whether, in a replevin against a successor of the bishop, X. can use the release as a reply to an avowry for the whole rent, (1) if the avowant has been seised of the whole rent by the hand of X. but can allege no older seisin, or (2) if since the release the avowant's last predecessor died seised of the whole rent and the avowant himself has been seised. The second of these allegations having been made, the plaintiff does not prosecute.

## I

The Bishop of Hereford was attached to answer Richard, Abbot of Thurgarton, of a plea wherefore he took his beasts etc.

*Herle* avowed the taking etc., for that this same Abbot holds of [the Bishop] certain tenements by fealty and the service of ten shillings a year, of which services [the Bishop] himself was seised by the hand of this same Abbot, as by the hand etc. And for thirty-five shillings arrear for three years and a half before the taking he avows etc.

<sup>1</sup> This case is Fitz. *Avowre*, 201.

*Den.* La ou vous avowez pur xxxv. souz ariere par la resoun qe nous tenoms de vous par feaulté et <sup>1</sup> par x. souz par an, nous vous dioms q'un D.<sup>2</sup> Evesqe de Hereford vostre predecessour par l'assent et la volunté del chapitre de Hereford relessa et quiteclama a un G. nostre feffour a luy et a cez heirs et a cez assignez <sup>3</sup> touz manere de services forspris feauté et ij. souz par an etc. par ceo fait etc. Jugement si encountre le purport de ceo fait pur aultre service etc. sur nous peussez avowrie faire.

*Herle.* C'est un bref de possessioun et avowoms de nostre possessioun demene solom ceo qe estatut nous doune bone avowrie. Jugement si a cele seisine ne devetz respoudre.

*Toud.* Ceo qe nous doune point cause de jugement ne issue du <sup>4</sup> plee jeo n'ai mestier a conustre. Mez tout vousissoms la seisine traverser, ceo ne serroit issue du plee sauntz r[espoudre] a la tenaunce. Et si trové fust qe jeo tenisse de vous solom le purport de cel escript, quei prendret vous <sup>5</sup> par la seisine (*quasi diceret nichil*)? Et par consequent a la seisine n'ay jeo mye mestier a respoudre.

*Berr.* Si l'Evesque fust seisi par taunt de temps qe fraunktenement luy est acreu et puis est destourbé n'avereit il mye l'assise (*quasi diceret sic*)?

*Malb.* De choce q'est encountre comune droit il n'avendra ja al assise saunz especialté ou chose qe taunt vaut come tittle de possessioun.<sup>6</sup> Mez ore avoms mys <sup>7</sup> encountre luy le fait soun predecessour, par quel fait le droit dez services aultrez qe le fait ne pourparle <sup>8</sup> se <sup>9</sup> esteint. Par quei al assise encountre son <sup>10</sup> fait n'avendra il mye sauntz moustre sa possessioun puis la lymitacioun du bref de novele disseisine; nec per consequens al assise <sup>11</sup> avoms <sup>12</sup> mestier a respoudre.

*Toud. ad idem.* S'il <sup>13</sup> dient par lour avowerie lez services estre ariere ij.<sup>14</sup> aunz,<sup>15</sup> et desicome eaux mesmes suppos[ent] estre hors de ceaux services ij. aunz et demy,<sup>16</sup> et par lour fait le droit se esteynt, jugement si nulle si breve et courte seisine, qe poet estre <sup>17</sup> par cohercioun ou par destresce, saunz moustre tittle continuelment puis la limitacioun du bref etc., encountre le fait lour predecessour sur nous peussent avower.

<sup>1</sup> Om. et A; ns. T.    <sup>2</sup> W. P.    <sup>3</sup> Om. et . . . assignez P.    <sup>4</sup> de D, T.  
<sup>5</sup> escrit vous ne prendrez rien P.    <sup>6</sup> vaut cum possessioun continue P.    <sup>7</sup> Om.  
mys D.    <sup>8</sup> Om. aultrez . . . pourparle P.    <sup>9</sup> ne se D.    <sup>10</sup> le D.    <sup>11</sup> Corr.  
a la seisine.    <sup>12</sup> navoms D, T, P.    <sup>13</sup> Il D, P.    <sup>14</sup> iij. P.    <sup>15</sup> Ins. et demy  
et nous navoms este tenant de la terre forqe iij. aunz D.    <sup>16</sup> iij. aunz a plus P.  
<sup>17</sup> Ins. faite D.

*Denom.* Whereas you avow for thirty-five shillings arrear by reason that we hold of you by fealty and ten shillings a year, we tell you that one D., Bishop of Hereford, your predecessor, by the assent and will of the Chapter of Hereford, released and quitclaimed to one G. our feoffor, to him, his heirs and assigns, all manner of services, except fealty and two shillings a year etc., by this deed etc. Judgment, whether you can avow upon us for other service against the purport of this deed.

*Herle.* This is a possessory writ and we avow on our own possession according to the Statute which gives us a good avowry.<sup>1</sup> Judgment, whether to this seisin you ought not to answer.

*Toudeby.* I have not got to admit what does not give [you] any cause for judgment or any issue of the plea. Even if we wished to traverse the seisin, that would not be an issue of the plea, if there were no answer to the tenancy. And if it were found that I held of you according to the purport of this writing, what would you take by [your] seisin? Why, nothing. Consequently I have no need to answer to the seisin.

BEREFORD, C.J. If the Bishop were seised for so long a time that freehold accrued to him, and afterwards he were disturbed, would not he have the assize? Yes, he would.

*Malberthorpe.* Of a thing that is against common right he will never get to the assize without specialty or something equivalent as a title for possession.<sup>2</sup> But now we have produced against him the deed of his predecessor, whereby the right of the services other than those of which it speaks is extinguished. Therefore he will not get to the assize against his deed, unless he shows possession [ever] since the limitation of the writ of novel disseisin; and consequently we have no need to answer to the [seisin].

*Toudeby* to the same effect. They say by their avowry that the services were arrear for three years and a half [and we have only been tenant for four years]; and, since they themselves suppose themselves to be 'out' of these services for three years and a half, and [since] by the deed 'the right' was extinguished, we pray judgment whether against the deed of their predecessor they can avow upon us in respect of so brief and short a seisin, which might have been [gained] by coercion or distress, unless they can show title continuously since the limitation of the [novel disseisin].<sup>3</sup>

<sup>1</sup> Apparently Stat. Westm. II. c. 2.

<sup>2</sup> Or 'something equivalent, such as continuous possession.'

<sup>3</sup> That is, since 1242.

*Herle.* Ceo n'est pas fourme en ceo<sup>1</sup> plee a pleder sur l'entré del tenaunt; eynz suffist a<sup>2</sup> meyntenir qe vous tenez de nous, et sur cele tenance averer la possessioun. Et del houre qe vous refuset cel averement, demaundoms jugement etc.

*Malb.* L'avoverie qe vous avez fait si est de vostre seisine demene et dites<sup>3</sup> qe nous tenoms de vous par les services de<sup>4</sup> x. souz. La dioms nous qe nous tenoms de vous par les services de ij. souz, et en prove de ceo si mettoms avaunt le fait vostre predecessour a descharger la<sup>5</sup> tenaunce q'est<sup>6</sup> en le droit. Jugement si a nul averement de la seisine encountre le fait qe le droit esteint doivent avenir.<sup>7</sup> Et d'autrepart, par lour avoverie demene qi qe vousist acounter le temps qe nous avoms<sup>8</sup> esté tenaunt, tot eussent il esté seisi, auxi com nous ne grauntames,<sup>9</sup> ceo n'amoute fors<sup>10</sup> un demy an. Jugement si de si<sup>11</sup> courte seisine encountre le fait etc.

*Scrop.* Par auncyene lay home purreit avower de sa seisine demene. Mez a la<sup>12</sup> lay especial si est ceo la restr[eint] qe home ne soit destreint encountre la fourme de soun feffement. Mez ore n'estes vous pas feffé par chartre, et par consequent vous estes a la comune lay. Par quei etc.

*Berr.* Il n'ount rien dit unqore qe lour doune tittle<sup>13</sup> d'avowrie faire encountre le fait q'est mys avaunt, s'il ne voillent moustrer tittle du temps plus tardif ou destruire le fait q'est mys avaunt com barre.<sup>14</sup>

*Herle.* Sire, nous dioms qe nostre predecessour seisi etc.<sup>15</sup> et morust seisi de eisdem serviciis et nous seisi com en continuaunt l'estat nostre predecessour. Jugement etc.

Et sic remanet.

## II.<sup>16</sup>

<sup>17</sup> L'Evesque de Hereford avowa etc. sur Richard Turgrim<sup>18</sup> qe se plaint, et par la reson q'il tent de lui certain tenemenz par homage et fealté et les services de ix. s. x. d. et par escuage etc. scil. qaunt l'escu court a xl. s. vj. d., des queux services nomement de la rente et del escuage<sup>19</sup> il mesme fut seisi par my etc.<sup>20</sup> cesti Richard, et pur le homage etc. si avowe il etc. une prise, et pur les ix. s. x. d., iiij. aunz avaunt le jour de la prise, si avowe il etc.

<sup>1</sup> Ceo ne serroit issue de P. <sup>2</sup> de D. <sup>3</sup> et nous dioms P. <sup>4</sup> Om. to after next services de D. <sup>5</sup> nostre D. <sup>6</sup> Om. gest P. <sup>7</sup> Om. avenir T. End of speech, P. <sup>8</sup> Rep. avoms A. <sup>9</sup> grantoms pas D. <sup>10</sup> Ins. a D. <sup>11</sup> Om. si A; ins. T; jug' si si D. <sup>12</sup> mais par D. <sup>13</sup> cause P. <sup>14</sup> Om. ou . . . barre P. <sup>15</sup> par my la mayn soun feffour P. <sup>16</sup> Text from M: compared with P, R, S. Some of these reports ascribe this case to A.R. 3. <sup>17</sup> Ins. Herle R; ins. Henri S. <sup>18</sup> Turgryp P; Thurgrim S. <sup>19</sup> Om, et del escuage P. <sup>20</sup> Ins. et M.



*Herle.* In this action it is not [proper] form<sup>1</sup> to plead about the tenant's entry; but it is enough to maintain that you hold of us, and then to aver the possession upon this tenancy. We pray judgment etc. since you refuse this averment.

*Malberthorpe.* The avowry which you make is on your own seisin, and you say that we hold of you by the service of ten shillings. In answer we tell you that we hold of you by the service of two shillings, and in proof of this we produce your predecessor's deed to discharge the tenancy; and that lies in the 'right.' Judgment, whether you ought to get to any averment of the seisin against the deed which extinguishes the 'right.' Moreover, their own avowry shows that if [you] reckon up the time for which we have been tenant, then, even if they have been seised, which we do not admit, their seisin did not amount to more than half a year. Judgment, whether on so short a seisin [and] against the deed etc.

*Scrope.* By the old law a man might avow on his own seisin. By the special law this is restrained in such wise that a man be not distrained against the form of his feoffment.<sup>2</sup> But here you are not enfeoffed by charter, and consequently you are at common law. Therefore etc.

BEREFORD, C.J. They have as yet said nothing that gives them title to avow against the deed which is produced, unless they will show title from a time later [than the deed] or avoid the deed which is produced as a bar.

*Herle.* Sir, we say that our predecessor was seised and died seised of these services, and we, continuing the estate of our predecessor, were seised. Judgment etc.

So the case stands.

## II.

The Bishop of Hereford avowed upon a plaintiff, Richard Thorgrim, and for the reason that he holds of him certain tenements by homage and fealty and the service of nine shillings and ten pence, and by escuage, to wit six pence when the rate is forty shillings on the fee; of which services, in particular of the rent and the scutage, [the avowant] himself was seised [by the hand of] the plaintiff; and for the homage etc. he avows one taking, and for the nine shillings and ten pence arrear for four years before the day of the taking he avows [another taking.]

<sup>1</sup> Or 'it would not be an issue.'

<sup>2</sup> Stat. Marl. c. 9, which gives the *contra formam feoffamenti*.

*Malb.* Qaunt a l'avowerie del homage souvent le avoms tendu. Prest etc. (Et alii e contra.) Et qaunt a la rente il ne put pur taunt avower sur nous, qe nous vous dioms qe un Roger de Hereforde, qi assigné nous sumes, tynt en aséun temps ceux tenemenz de Thomas predecessor mesme cesti Evesqe par tiel service<sup>1</sup> com il dient. Le quel T. par assent<sup>2</sup> de Dien et de Chapitre de Hereforde<sup>3</sup> releassa et quiteclama tut le dreit q'il avoit en la rente jesqe a ij. s., et par ceo fet.<sup>4</sup> Jugement, si pur plus qe n'est contenu en le fet vostre predecessor pussez avowerie fere.

*Herle.* Nous avoms avowé de nostre seisine demene par my vostre mayn demene com par my etc. Seoms en un de la seisine.

*Toud.* A ceo n'avoms mester de respondre, qe nous avoms mis avaunt quiteclamaunce de la rente jesques a ij. s., qe esteint chescun maniere de action maintenant qaunt le fet est escript et ensealé. Et pur ceo seoms en<sup>5</sup> un du fet, qe rente une foitz esteint ne put estre revifié<sup>6</sup> sanz novele title. Jugement.

{*Herle.*<sup>7</sup> Nostre avowerie est en la possession. Par quai il nous suffit d'averer nostre possession par my vostre mayn demeyn. A quai vous ne r[esponez] nient. Jugement.}

*Malb.* L'avowerie n'est pas cy<sup>8</sup> en la possession qe ele se lye<sup>9</sup> en le dreit en taunt com il avowe sur son verrei tenaunt. Dont depus qe nous mettoms avaunt la quiteclamaunce son predecessor qe tesmoigne<sup>10</sup> les tenemenz estre deschargez jesq'a ij. s., jugement si contra factum etc. pussez avower ou a la possession avoms<sup>11</sup> mester a respondre.

*Ber.*<sup>12</sup> Il vous covendreit plus dire qe<sup>13</sup> contra tale factum etc. Mès<sup>14</sup> nous n'entendoms nent pur title un tiel myse.<sup>15</sup>

*Kyng.*<sup>16</sup> Thomas nostre predecessor fut seisi en son temps bien x.<sup>17</sup> aunz et morust seisi, et demandoms jugement. (Et per hoc dictum<sup>18</sup> melioratur titulus, quia per hoc quod predecessor obiit seisisus indutum<sup>19</sup> est feodum ecclesie.)<sup>20</sup>

*Ber.* Deshoneste chose est a prodhomme a<sup>21</sup> demander ceo<sup>22</sup> qe son predecessor ad releissé. Mès depus q'il se fount title de plus haut il vous covendra<sup>23</sup> respondre.

*Toud.* Nous avoms assez respondu, et avoms sovent veu qe assigné ad usé quiteclamaunce fet a son feffour.

<sup>1</sup> par antiels services *R.* <sup>2</sup> T. assigna *M*; de assent *P*; par assent *R.* <sup>3</sup> *Ins.* et *M.* <sup>4</sup> *Om.* et . . . fet *R.* <sup>5</sup> a *R.* <sup>6</sup> revivenee (?) *P*; revifie *S.* <sup>7</sup> Supplied from *S.* <sup>8</sup> issi *R*; *om.* cy *S.* <sup>9</sup> gele ne lye *R*; qel ne ly *S.* <sup>10</sup> prove *S.* <sup>11</sup> navoms *R.* <sup>12</sup> Hert. *S.* <sup>13</sup> quia *P, S.* <sup>14</sup> *Om.* mes *R, S.* <sup>15</sup> title une tiele nue (?) seisine *R*; title une seisine *S.* <sup>16</sup> Migg. *P*; Hengham *S.* <sup>17</sup> xx. *S.* <sup>18</sup> titulum *S.* <sup>19</sup> doubtful *M*; seisisus in dominicum feodum *R.* <sup>20</sup> inductum est in feod. eccl. *S.* <sup>21</sup> *Om.* a *R, S.* <sup>22</sup> chose *P, R.* <sup>23</sup> covent *R.*

*Malberthorpe.* As to the avowry for homage, we have often tendered it. Ready etc. (Issue joined.) As to the rent, he cannot avow for so much upon us, for we say that one Roger of Hereford, whose assign we are, at one time held the tenements of Thomas, this bishop's predecessor, by the services that they mention; and this Thomas, by the assent of the Dean and Chapter of Hereford, released and quitclaimed all the right which he had in the rent, except as to two shillings; and he did so by this deed. Judgment, whether you can avow for more than is contained in your predecessor's deed.

*Herle.* We have avowed on our own seisin by your own hand as by [the hand of our very tenant]. Let us agree about the seisin.

*Toudeby.* We have no need to answer that; for we have put forward a quitclaim of the rent, except two shillings, and that extinguishes every kind of action at the moment when the deed is written and sealed. So let us agree about the deed; for rent, when once extinguished, cannot be revived without a new title. Judgment.

{*Herle.*<sup>1</sup> An avowry is a possessory matter, so it suffices us to aver our possession by your own hand. To that you do not answer Judgment.}

*Malberthorpe.* The avowry is not so purely a matter of possession; for it is laid in the 'right,' since he makes avowry 'as upon his very tenant.' Therefore, since we produce the quitclaim of his predecessor, which witnesses that these tenements are discharged, except as to two shillings, we pray judgment whether you can avow against such a deed etc., and whether we have need to answer to the possession.

BEREFORD, C.J. It behoves you to say more, since it is against such a deed etc. We do not think that such a [nude seisin] will serve as a title.

*King[eshemedede].*<sup>2</sup> Thomas our predecessor was seised in his day for full ten years and died seised, and we demand judgment. (And by this [addition] his title is improved; for by the fact that his predecessor died seised the fee of the church is vested.)<sup>3</sup>

BEREFORD, C.J. It is a dishonourable thing for an honest man to demand that which his predecessor released. But as they make a title higher up, it will behove you to answer.

*Toudeby.* We have given answer enough, and often have we seen an assign employ a quitclaim made to his feoffor.

Not in all our books.

<sup>2</sup> Or Ingham or Miggeley.

<sup>3</sup> We take *indutum* to be equivalent

to the common *vestitum*. But if this was the word, it puzzled copyists.

*Ber.* Et<sup>1</sup> si le venez par aventure en son cas. Mès de ceo vous seure<sup>2</sup> jeo<sup>3</sup> q'en le cas qe vous estes Roger<sup>4</sup> put<sup>5</sup> avauntage avoir qe vous n'averez mye.

*Toud.* Si jeo ne me descharge par le *replegiari*, jeo su<sup>6</sup> sanz remedie, qe le *ne veres* ne may vaut de rien.<sup>7</sup>

*Scrop.* Devaunt statut le feffour poeit avower destresce<sup>8</sup> par my seisine sur le feffé 'contra formam carte'; par qei ordiné fut par statut 'quod nullus distringatur<sup>9</sup> contra formam<sup>10</sup> etc.' Mès le fet qe vous mettez avaunt n'est pas vostre chartre, qe<sup>11</sup> vous n'estes mye le feffé, mès assigné. Par qei vous estes a la comune ley avaunt statut. Par qei il vous covent respondre a la seisine.

Et sic usque in Oct. S. Hil.<sup>12</sup> Et postea querens non prosequitur. Ideo etc.

### III.<sup>13</sup>

Willem Sylgrim se pleint qe Robert Evesqe de Herforde atort prist ces avers, scilicet un boefe e ij. genices tieu jour etc.

*Herle* avowa la prise de un boefe bone e resnable par la r[eson] q'il tient de lui xxx. acres de terre, dount le lieu ou la prise fut fete en est parcele, par fealté e par les services de viij. souz par an; des queux services il fut seisi par my sa main, com par mi la main sun verray tenant. Et pur les viij. souz arere par iij. anz e demi le jour de la prise etc. Et qaunt a ij. genices il avowe la prise etc. par la r[eson] q'il tient de lui x. acres en mesme la ville par les services de xxij. deniers. E pur les services arrere par ij. anz issi avowe etc.

*Touth.* A cele avowerie ne devez avenir, car un Johan Evesque de Hereforde vostre predecessour, de l'assent e la volenté le deen e le chapitre de Hereforde, granta e quiteclama a Rogier de Hereforde e a ces heirs e a ces assignez tote cele rente pur autre tenemenz, reservant a lui e ces services<sup>14</sup> ij. souz par an, par ceo fet qe cy est. (E mist avant le fet a la court.) E demandoms jugement si encontre le fet sun predecessour puisse avowerie fere.

<sup>1</sup> *Om.* Et *P, R.*    <sup>2</sup> sur *S.*    <sup>3</sup> Mes sur su jeo *R*; mes de ceo vous seur' jeo crey *P.*    <sup>4</sup> *Om.* Roger *S.*    <sup>5</sup> purreit *R.*    <sup>6</sup> sui *R*; suy *P, S.*    <sup>7</sup> *Om.* de rien *R, S.*    <sup>8</sup> av[oir] destr[eint] *R.*    <sup>9</sup> distringat aliquem *S.*    <sup>10</sup> *Ins.* carte *S.*    <sup>11</sup> qar *R*; par quey *P.*    <sup>12</sup> End of case *R, S.*    <sup>13</sup> Text from *Y* (f. 172d).  
<sup>14</sup> *Corr.* successors.



BEREFORD, C.J. You will peradventure see that in a proper case; but of this I assure you<sup>1</sup> that, in the case in which you are, Roger would have an advantage that you will not have.

*Toudeby.* If I cannot discharge myself by a replevin, I am without remedy, for the *ne vexes* would not avail me.

*Scrope.* Before the Statute, the lord might by reason of seisin avow a distress upon the feoffee against the form of the charter; wherefore it was ordained by Statute 'that none be distrained against the form etc.'<sup>2</sup> But the deed that you produce is not your charter, for you are not the feoffee but an assignee. So you are at the common law as it was before the Statute.<sup>3</sup> Therefore you ought to answer to the seisin.

And so to the octave of Hilary. And afterwards the plaintiff was nonsuited. Therefore etc.

### III.

William Sylgrim complains that Robert, Bishop of Hereford, wrongfully took his beasts, to wit, one ox and two heifers, on such a day etc.

*Herle* avowed the taking of the ox good and reasonable, for that [the plaintiff] holds of him thirty acres of land, whereof the *locus in quo* is parcel, by fealty and by the service of eight shillings a year, of which services he was seised by his hand as by the hand of his very tenant. And for the eight shillings arrear for three-and-a-half years on the day of the taking, [he avows] etc. And as to the heifers, he avows the taking, for that [the plaintiff] holds of him ten acres in the same vill by the service of twenty-two pence. And for the service arrear for two years [he avows] etc.

*Toudeby.* To this avowry you ought not to get, for one John Bishop of Hereford, your predecessor, by the assent and will of the Chapter of Hereford, granted and quitclaimed to Roger of Hereford, his heirs and assigns, [in exchange] for other tenements, all that rent, reserving to himself<sup>4</sup> the service of two shillings a year, by this deed, which is here. (He produced a deed to the Court.) And we demand judgment whether you can avow against the deed of your predecessor.

<sup>1</sup> Or 'but sure I am.'

<sup>2</sup> Stat. Marl. c. 9: 'qui autem per cartam pro certo servicio . . . feoffati sunt . . . ad huiusmodi sectam vel ad aliud contra formam feoffamenti sui de cetero non teneantur.'

<sup>3</sup> The *contra formam feoffamenti* will not lie for or against an assign. Sec. Inst. 118.

<sup>4</sup> An omission may be suspected Supply 'and his successors fealty and.'

*Herle.* Nous dioms qe nous sumes seisiz par mi vostre main com par mi la main nostre verrei tenant. Jugement si par nul tiel fet de nostre possession nous poez oster.

*Scrop.* Nous poems pleder a vostre avowerie par un de ij. veies : ou r[espondre] a la possession, ou barrer vous en le droit. Mès ore mettons en barre de vostre avowerie le fet vostre predecessour qe voet relese et quiteclamaunce. Jugement etc.

*Herle.* Grantez qe nous sumes seisi par mi vostre mein, e nous r[espondrons] a ceo fet.

*Alie die Touth.* Nous tenoms de lui par certain services ; e pur sa outraiouse destresce nous avoms fet ceste deliverance ; le quel outrage le fet sun predecessor tesmoigne. E demandoms jugement si en contre tieu fet etc.

*Herle.* Par vous le *ne vexes* servereit de rien, car issi par cestui bref chescon tenant de mounde se deschargereit.

*Toud.* Nous sumes issi privé a celui qe purchacea la quiteclamance qe nous puissions tiele excepcion user. E pur ceo ne serroms mie sanz remede, car ceo fet nous eidera par cestes paroles ‘ sibi et heredibus suis vel assignatis.’

*Herle.* Ceo n’est nent nostre fet fete a Rogier qi assigné vous feistes, ne le fet nostre predecessour fet a vous. Jugement etc.

*Hervy a Touth.* Dites autre chose.

*Touth.* Il ont avowé pur la rente arere par iij. anz e demi. E nous ne sumes pas tenant qe iiij. anz. E demandoms jugement si de si brefe temps seisi encontre le fet lour predecessour puissent avowerie fere.

*Herle.* Nous avom avowé de nostre seisine demeine par my vostre mein com par mi etc. E la seisine n’ad regard ne a brefe temps ne a lunge temps.

*Bereford.* Gentz de seinte eglise ont une merveillouse manere. S’il eient le pee en la terre a akun homme, il volont avoir tut le corps. Et pur l’amour de dieu l’evesqe est un prodhomme ! E ceo est le fet son predecessour, qe ad receu altres tenemenz pur ceste relese e quiteclamance. E il n’ad fet nul tort ; e qe vous ne facez nul tort pur faus colour. E q’il ne aveigne de vous cum altrefoiz avient a un homme qe fist une disseisine, dount lui ad<sup>1</sup> bon counte *supra* inter Herbertum de Marreys e Thomas de Cogan.

*King.* Saint Thomas de Cantelowe jadis Evesqe de Hereforde

<sup>1</sup> *Corr.* il y ad.

*Herle.* We say that we are seised by your hand as by the hand of our very tenant. Judgment, whether you can oust us from our possession by any such deed.

*Scrope.* We can plead to your avowry in one of two ways: either by answering to the possession or by barring you in the right. And here we produce in bar of your avowry the deed of your predecessor which wills a release and quitclaim. Judgment etc.

*Herle.* Admit that we are seised by your hand, and then we will reply to this deed.

On another day *Toudeby*: We hold of him by certain services; and because of his outrageous distress we have made this deliverance; and the deed of his predecessor witnesses [that there is] outrage. We pray judgment whether against such a deed etc.

*Herle.* According to you the *ne vexes* would never be necessary, for every tenant in the world might discharge himself by this writ.

*Toudeby.* We are privy to him who purchased the quitclaim in such wise that we can use this plea. Therefore we are not without remedy, for the deed aids us by reason of the words 'to him and his heirs or assigns.'

*Herle.* This is not our own deed made to Roger, whose assign you make yourself, nor is it the deed of our predecessor made to you. Judgment etc.

STANTON, J., to *Toudeby*. Say something else.

*Toudeby.* They have avowed for the rent arrear for three-and-a-half years. And we have only been tenant for four years. We pray judgment, whether on a possession for so short a time they can avow against the deed of their predecessor.

*Herle.* We have avowed on our own seisin by your hand as by the hand etc. And seisin is not a matter of long time or of short.

BEREFORD, C.J. The men of Holy Church have a wonderful way! If they get a foot on to a man's land they will have their whole body there. For the love of God, the Bishop is a shrewd fellow! And this is the deed of his predecessor, who received other tenements for this release and quitclaim. And [the plaintiff] has done no wrong. So don't you do him any wrong by false colour lest there happen to you what happened to one who did a disseisin, about which there is a good tale above in *Herbert de Mareys v. Thomas Cogan*.<sup>1</sup>

*Kingeshemedé.* Saint Thomas of Cantelupe,<sup>2</sup> sometime Bishop of

<sup>1</sup> The story of the three pair of gallows. See vol. iii. p. 117. The text does not imply that the Chief Justice cited a book.

<sup>2</sup> Not officially canonised until 1320; but much worshipped before that date. See *Dict. Nat. Biog.* viii. 448.

nostre predecessor fut seisi de ses services par mi la main Rogier de Hereforde vostre feffour, com par mi la main sun verray tenant, par xx. anz, e morust seisi de ses services. Après qi mort cestui Evesqe fut seisi des avantdiz services par mi la main Rogier de Hereforde. Le quel R[ogier] vous enfeffa a tenir des chiefs seignurages du fee; des queux services cestui Evesqe fust seisi par my vostre main com etc.

*Touth.* Nous conissons bien qe nous sumes vostre tenant; e ne mie a tenir par les services par 'queux vous avez avowé, car vostre predecessour ad relessé et quiteclamé *ut supra*. Jugement.

*King.* Nous avom avowé de nostre seisine demene, e avom lié nostre avoverie de la seisine nostre predecessour, e vous <sup>1</sup> ore a defere cele avoverie par un fet fet a R[ogier] de Hereforde, a qei vous estes tut estrange. Jugement etc.

*Touth.* Nous sumes tenant des tenemenz e issi privez a descharge.

*Ber. a Touth.* Jeo dy qe vous poez estre aidé par ceo fet; e ne mie a cestui bref; car les heirs Rogier de Hereforde serreient bien resceu a descharger les tenemenz.

*Hervy.* Vous avez avowé pur services des queux vous e vos predecessours avez esté seisi, e demandez jugement. Et eux vous dient qe J. jadis Evesqe etc. vostre predecessour de l'assent e la volenté sun chapitre relessa e quiteclama a Rogier le feffour par un fet q'il mettount avant, e demandent jugement etc. Attendez voz jugemenz as utaves de Seint Hillari etc.

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 41, Heref.

Richard, Bishop of Hereford, and Robert Athelard were summoned to answer Richard Thorgrym of a plea wherefore they took his beasts and unlawfully detained them against gage and pledges. And thereupon Richard Thorgrym complains that on [12 Nov. 1309] Wednesday next after the feast of St. Martin, A.R. 3, in the vill of Homptone,<sup>2</sup> in a place that is called Eggedone, the Bishop and Robert took four oxen, three steers (*bouettos*) and two heifers (*inuencas*) of his and unlawfully detained them against gage etc., until etc.: damages, ten pounds. And thereof he produces suit.

And the Bishop and Robert, by their attorneys, come. And the Bishop answers for himself and Robert, and defends tort and force when etc.; and he avows the taking as good: and lawfully, for he says that [the plaintiff] holds of him in the said vill a messuage and a virgate of land with the

<sup>1</sup> *Supply* estes (?).

<sup>2</sup> Mod. Hampton Bishop.



Hereford, our predecessor, was seised of these services by the hand of Roger of Hereford, your feoffor, as by the hand of his very tenant, for twenty years, and died seised of these services. And after his death the present Bishop was seised thereof by the hand of Roger of Hereford. And Roger enfeoffed you to hold of the chief lords of the fee. And of these services the present Bishop was seised by your hand [as by the hand] etc.

*Toudeby.* We freely confess that we are your tenant, [but] not to hold by the services for which you have avowed ; for your predecessor has released and quitclaimed *ut supra*. Judgment.

*Kingshemede.* We have avowed on our own seisin, and have [also] laid our avowry on the seisin of our predecessor ; and now you [are trying] to defeat this avowry by a deed made to Roger of Hereford, to whom you are an utter stranger. Judgment etc.

*Toudeby.* We are tenant of the tenements, and so we are privy to the discharge.

BEREFORD, C.J., to *Toudeby*. I tell you that you can be aided by this deed, [though] not on this writ, for the heirs of Roger of Hereford might well be received to discharge the tenements.<sup>1</sup>

STANTON, J. You have avowed for services of which you and your predecessors were seised and you pray judgment. And they say that J. sometime Bishop, your predecessor, by the assent and will of the Chapter, released and quitclaimed to Roger, their feoffor, by a deed which they produce ; and they pray judgment etc. So await your judgments on the octave of Hilary etc.

#### Note from the Record (*continued*).

appurtenances by fealty and the service of eight shillings a year ; and that of these services the Bishop was seised by [the plaintiff's] hand. Also he says that [the plaintiff] holds of him ten acres of land with the appurtenances in the same vill, which he purchased of one Roger of Hereford, who sometime held these tenements of the Bishop by homage and fealty and the service of twenty-two pence a year and of six pence to the King's scutage of forty shillings, when it shall occur, and so in proportion ; and of all these services, except the homage, the Bishop was seised by [the plaintiff's] hand, and of the homage by the hand of Roger of Hereford, who enfeoffed [the plaintiff] of the ten acres to hold of the chief lords of the fee. And because the rent of eight shillings for the messuage and virgate of land was arrear for three and a half years before the day of the taking, he took the three

<sup>1</sup> Apparently arguing that if the heirs can discharge the tenements by replevin, that cannot be the assignee's remedy.

Note from the Record (*continued*).

oxen (*boves*) and two heifers in the said place called Eggedene which is part of the virgate etc. And because [the plaintiff's] homage for the ten acres of land was arrear on the said day of the taking, he took the four oxen of [the plaintiff], as well he might.

And [the plaintiff] says that the Bishop cannot avow the taking of the beasts lawful for the said services; for he says that all the tenements from which the Bishop exacts the said service were once in the seisin of one Richard of Hereford, father of the said Roger of Hereford, who held them with the appurtenances of one John, sometime Bishop of Hereford, predecessor of this Bishop etc.;<sup>1</sup> and that the said Bishop [John] with the assent and will of his chapter remitted to Roger of Hereford and his heirs all rent issuing from the tenements down to (*usque ad*) two shillings, by a writing of the said Bishop and his chapter, which he proffers (and which testifies that the Bishop with the assent and will of John the dean and his chapter of Hereford, out of the nine shillingworths and ten pennyworths of yearly rent which Richard was bound to pay them annually for his land de la Felde, which he held of the Bishop, remitted to Richard and his heirs and his assigns whomsoever for ever seven shillingworths and ten pennyworths of the said rent, so that thenceforth they should render to the Bishop and his successors two shillings a year); and, since the tenements in the seisin of Richard of Hereford were exonerated of the said rent down to two shillings by the deed of the said Bishop and his chapter in form aforesaid, [the plaintiff] prays judgment whether the now Bishop can avow as lawful the said taking upon [the plaintiff], who now has the estate of Richard of Hereford, for any other services that Richard of Hereford was bound to

12. ANON.<sup>2</sup>

Replevine, l'avowerie pur sute, ou le pleintife mist avant le fait le<sup>3</sup> feffour l'avowant qe de sute lui descharga, et l'avowant vynt et tendi d'averer sa seisine pus la limitacion de bref de novele diseisine. Et ceo fu receu sanz respondre al fait, quia extraneus fuit: aliter ipse responderet ut patet supra.

Un A. se pleynt de cez avers a tort pris etc.

*Herle* avowa etc. et par la resoun qe mesme celuy tient de luy etc. par homage et par fealté et les services de suyte a sa court etc. de treys semaines en treys semaines, dez queux services nous mesme seisi par my sa mayn demene etc., et pur la seute arriere si avowoms etc.

<sup>1</sup> The present bishop, Richard Swinfield, succeeded Thomas Cantilupe, who succeeded John le Breton. <sup>2</sup> Text from *A*: compared with *D*, *T*. Headnote from *D*. <sup>3</sup> al *D*.

Note from the Record (*continued*).

do by reason of the said writing. And as to the homage etc. [the plaintiff] says that at Hereford [and Sugwas],<sup>1</sup> in the said county, on the feast of Christmas in A.R. 3 [A.D. 1309], in the presence of [four names], he tendered his homage for the tenements etc.; and thereof he prays judgment etc.

And the Bishop says that [the plaintiff] did not tender him his homage as [the plaintiff] says; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* for witnesses and jurors is awarded for the octave of St. Hilary.

And the Bishop as to the said rent, for the arrears whereof he has avowed above etc., says that Thomas de Cantilupo sometime Bishop of Hereford, his predecessor, was seised of the said rent of eight shillings for the said tenements by the hand of Roger, feoffor of [the plaintiff], and likewise he, the Bishop, was seised of the same rent by the hand of [the plaintiff], as aforesaid; and this he offers to aver; and thereupon he prays judgment whether as against [the plaintiff], who is a purchaser etc., he [the Bishop] ought to be prejudiced by the charter against the seisin of him, the now Bishop, and of his predecessor, which he alleges, in such wise that he cannot avow the taking as lawful in this behalf.

A day to hear their judgment is given them at the term aforesaid.

Afterwards at that day came the Bishop by his attorney and offered himself on the fourth day against Richard Thorgrym. And he came not and was the plaintiff. Therefore let the Bishop go without day, and be Richard and his pledges to prosecute in mercy. And let the Bishop have a return of the beasts etc. Let inquiry be made for the names of the pledges etc.

## 12. ANON.

Feoffment by charter reserving no suit. Avowry for suit by an assignee of the feoffor. This will be good, despite the charter, if continuous seisin since the limit set by Stat. Westm. II. c. 2 be averred. *Semble* that Stat. Marl. c. 9 does not aid the plaintiff.

One A. complains of his beasts being wrongfully taken etc.

*Herle* avowed, for the reason that [the plaintiff] himself holds of him etc. by homage and fealty and the service of suit to his court etc. from three weeks to three weeks, of which services we ourselves were seised by his own hand etc.; and for the suit arrear we avow etc.

<sup>1</sup> Interlined. Stretton Sugwas, near Hereford.

*Wilb.* Sire, nous vous dioms q'un Martyn fust seisi de la terre etc. tempore Regis Ricardi <sup>1</sup> etc. le quel Martyn enfeffa un Richard a tenir de luy mesme par homage, feaulté et par escuage etc. xl. souz pur toux services etc.; de Richard descendi a un P. com a fitz etc., le quel P. tient la terre avauntdit deschargé de seute; de P. a nous com a fitz etc.; et demaundoms jugement si pur la seute poetz avowerie faire.

*Herle.* Jeo ne su pas partie al fait, qe ceo n'est pas le fait mon auncestre par ount jeo deyve <sup>2</sup> estre lyé; et jeo attache sur vous qe vos tenemenz <sup>3</sup> etc. et sur ceo la une possessioun de ma seisine demene; et ceo plee est en la possessioun. Jugement si a la seisine etc. ne devetz etc.

*Wilb.* Seoms a un si ceo soit le fait vostre feffeour ou noun.

*Herle.* Il n'estut, qe jeo ne sey poynt al fait partie ne privé. Mez seoms nous a un de la seisine a quei vous estes partie et pryvé.

*Denom.* Coment qe vous dites qe ceo plee cy <sup>4</sup> est en la possessioun, l'avowerie si est en le droit et en la possessioun, desicomme nous moustroms la tenaunce deschargé de seute de si longe temps continué d'aunc[estre] qaunt <sup>5</sup> a ore. Et nous jugement si par tiele seisine vous peusse tittle acrestre d'avowrie etc.

*Scrope.* Le tenaunt ne se poet descharger sy noun par treys voyez: <sup>6</sup> ou par le *ne vexes* a la comune ley, ou par bref foundu sur estatut, ou par le *replegiari*. Mès <sup>7</sup> en cas ou le seignur avowe il luy covent lier sa possessioun tiele q'il <sup>8</sup> luy porra doner tittle d'avowerie, et cele tittle est continuaunce de seisine pus la limitacioun du bref de novele disseisine.

*Herle.* Le *ne vexes* est a descharger la tenaunce en le droit, et le *replegiari* sy est la <sup>9</sup> plus tendre choce et la plus possessionel <sup>10</sup> qe soit, et statut ne doigne cele possessioun meyntenir ou jeo le <sup>11</sup> voille averrer puis la lymitacioun etc. Jugement etc.

*Denom.* Nyent seisi puis la lymitacioun du bref de novele disseisine. Prest etc.

Et alii econtra: et non ultra limitationem brevis nove disseisine etc. quia factum fuit cuiusdam extranei.

<sup>1</sup> tempore R. T.    <sup>2</sup> dei D.    <sup>3</sup> qe vous tenez D, T.    <sup>4</sup> si D, T.    <sup>5</sup> taunge D, T.    <sup>6</sup> voies D T.    <sup>7</sup> mes D; mesme A.    <sup>8</sup> qe D, T.    <sup>9</sup> Om. la D.  
<sup>10</sup> In full A, D, T.    <sup>11</sup> la D, T.



*Willoughby.* Sir, we tell you that one Martin was seised of the land etc. in the time of King Richard, and he enfeofed one Richard, to hold of himself by homage, fealty and scutage [to the amount of] forty shillings, for all services; from Richard [the land] descended to one P. as son etc., and P. held the same discharged of suit; and from him [it descended] to us as son etc. We pray judgment whether you can avow for suit.

*Herle.* I am not party to the deed, for this is not the deed of my ancestor whereby I should be bound. And I allege against you that you hold etc. and also [allege]<sup>1</sup> my own seisin. And this plea is possessory. Judgment whether you ought not [to answer].

*Willoughby.* Let us agree whether this be the deed of your feoffor.

*Herle.* No need for that, for I am not party or privy to the deed. But let us agree about the seisin, to which you are party and privy.

*Denom.* Although you say that this plea lies in the possession, the avowry lies in the right and the possession; [and]<sup>2</sup> since we show [that] the tenancy [was] discharged from suit for so long a time continuously from our ancestor until now, we pray judgment whether title to an avowry can accrue to you from such a seisin.

*Scrope.*<sup>3</sup> The tenant cannot discharge himself except by [one of] three ways: by the *ne vexes* at the common law, or by a writ founded on the Statute, or by the replevin itself. But in case the lord avows, it behoves him to lay his possession so as to give him a title to avow, and that title is the continuance of seisin from the time limited for the writ of novel disseisin.<sup>4</sup>

*Herle.* The *ne vexes* goes to discharge the tenancy in the right; and replevin is the most tender and 'possessional' thing that there is, and the Statute does not enable you to maintain this [possessory action] where I will aver [a seisin] since the limitation. Judgment etc.

*Denom.* Not seised [ever] since the limitation of the writ of novel disseisin. Ready etc.

Issue joined—and not beyond the limitation of the writ of novel disseisin as the deed was a stranger's.<sup>5</sup>

<sup>1</sup> See the text, in which a small error may be suspected.

<sup>2</sup> We depart slightly from the text.

<sup>3</sup> Perhaps the judge.

<sup>4</sup> That is, from 1242. See Stat. Westm. I. c. 39; Stat. Westm. II. c. 2.

<sup>5</sup> The case, therefore, is not governed by Stat. Marl. c. 9.

13. PENWORE *v.* REYNWARD.

Replevine, ou il avowa sour le pleintif de la seisine soun auncestre par my la mayn sa mere : le pleintif nient receu de countrepleder la seisine saunz respoudre a la tenaunce, ne a voyder la seynnurye par respouns si noun desclamer ou hors de soun fee. Respice.

I.<sup>1</sup>

Johan fitz Beneth Renward et Johan<sup>2</sup> son friere furent attachez a respoudre a Raufe de Pouwore<sup>3</sup> de plee pur quei il avoient pris un soun chyval.

*Denom.* Johan etc. la prise<sup>4</sup> et droyturale, par la resoun qe mesme cesti Raufe tient de luy etc. en Trebedoke<sup>5</sup> par homage et fealté et par lez services de viij. souz et iiij. deniers par an etc., des queux services un Benete Renward piere Johan et Lucé sa femme come de lour droit en comune furent seisi par my la mayn un Rose<sup>6</sup> miere Raufe, qi heir il est, com par my la mayn lour verray tenaunt ; et purceo qe l'omage Raufe fitz et heir Rose si fust ariere le jour de la prise, si avowe il etc.

*Scrop.* Ceste avowrie si pecche encountre comune ley s'il ne dye plus atot,<sup>7</sup> qar homme et sa femme ne poont avoir droit<sup>8</sup> en comune si ceo ne soit par voie de purchatz. Et del houre qe ceste avowerie si est fait de la seisine B[enet] et L[ucé] sa femme come de lour droit en comune, il covient q'il dient coment il avendreient a ceaux services.

*Denom.* Rose miere Raufe si tient mesme ceaux tenemenz d'un Thomas de Pridias et par les services *ut supra* ; le quel Thomas enfeffa de ceaux services Benete piere Johan q'ore avowe et Lucé sa femme a eaux et a lour heirs de lour corps issauntz, issint qe Johanne est issue et heir Benet et L[ucé].

*Scrop.* Vous avowez sur Raufe et avez lié la seisine par my la mayn Rose mere Raufe. Sire, nous vous dioms qe lez tenemenz lez queux il suppose qe Raufe tient de luy en Trebedroke<sup>9</sup> si furent en asqun temps ensemblement ove altrez tenemenz en la seisine un William de Poyntire<sup>10</sup> ; de William si descendirent ceauz tenemenz ensemblement ove aultrez tenemenz, purceo q'il devya sauntz heir de soun corps, a Rose et a Oppe<sup>11</sup> com a deux seors etc., issint qe la

<sup>1</sup> Text from *A* : compared with *D*, *T*. Headnote from *A*. <sup>2</sup> Jordan *D*, *T*  
<sup>3</sup> Penwore *D*, *T*. <sup>4</sup> *Ins.* bone *D*. <sup>5</sup> Trebedrek *D*. <sup>6</sup> *Om.* to after next  
Rose *T*. <sup>7</sup> a tout' *D* ; atut *T*. <sup>8</sup> *Om.* droit *D*. <sup>9</sup> Trebedrek *T* and so  
below ; Trebderek' *D*, <sup>10</sup> Penrore *D*, <sup>11</sup> Oppere *D*, *T*.

13. PENWORE *v.* REYNWARD.

Avowry for homage alleging that the plaintiff is tenant and that the avowant's ancestor was seised by the hand of the plaintiff's ancestor. An elaborate special plea is disallowed as being in effect an argumentative denial of this tenancy and seisin.

## I.

John son of Benet Renward and [Jordan] his brother were attached to answer to Ralph of [Penwore] of a plea wherefore they took a horse of his.

*Denom.* John [avows] the taking good and lawful, for the reason that Ralph himself holds of him etc. in Trebedreke by homage and fealty and by the service of eight shillings and four pence a year, of which services one Benet Renward, John's father, and Lucy his wife were seised as of their right in common, by the hand of Rose, mother of Ralph, whose heir he is, as by the hand of their very tenant. And because the homage of Ralph, son and heir of Rose, was arrear on the day of the taking, he avows etc.

*Scrope.* This avowry sins against common law, unless he says more than that, for man and wife cannot have a right in common, unless it be by way of purchase. And since this avowry is made on the seisin of Benet and Lucy his wife as of their right in common, it behoves them to say how they came to those services.

*Denom.* Rose, mother of Ralph, held these tenements of one Thomas de Pridias by the services above mentioned; and Thomas enfeoffed of these services Benet, father of John the avowant, and Lucy his wife, and the heirs of their bodies issuing, and John is the issue and heir of Benet and Lucy.

*Scrope.* You avow upon Ralph and have laid a seisin by the hand of Rose his mother. Sir, we tell you that the tenements which [they] suppose that Ralph holds of [them] in Trebedreke were at one time with other tenements in the seisin of one William de Poyntire. From William these tenements with others descended to Rose and Oppe as two sisters [and one heir] as he died without heir of his body. A

pourpartie fust faite entre eaux, par quei qe lez tenemenz en Trebedroke ou la prise fust faite si achaièrent a la pourpartie Oppe com en allowaunce d'aultres tenemenz qe Rose avoyt etc.; Oppe se fist marier a Benet Renward, de qi seisine il avowe, et avoient issue; Oppe morust; Benet tient par la cortesy de l'Engleterre et survesquit Rose miere Raufe, par qi mayn il suppose Benet estre seisi, bien a x. aux; et del houre qe Benet mesme tient ceaux tenemenz du chief seignour sauntz meen tote sa vie saunt ceo qe Rose rien i avoit<sup>1</sup> en demene ou en seignourye, jugement s'il peussent par my la mayn Rose la seisine de ceaux services lyer.

*Denom.* Ordre de pleder est qe celui qe voudra countrepleder la seisine dez services il covient a prime chief<sup>2</sup> q'il se face privé com a graunter la tenaunce. Par quei conussez adeprimes si vous tenet de nous, et puis dites etc.

*Scrop.* Jeo n'ay mestier, qar si vous avowisset pur<sup>3</sup> celui quod<sup>4</sup> nunquam fuit in rerum natura, jeo serrei<sup>5</sup> a dire 'nul tiel, prest etc.' sauntz respoudre a la tenaunce (*quasi diceret sic*). Auxint de cea. De Rose ne poet il en nulle maniere avoir tenaunce dez<sup>6</sup> tenemenz qe B[eneyt] mesme tient en chief.

*Denom.* Nostre avowrie suppose deux choses. La primere est qe vous tenez de nous. La seonde qe nostre piere et nostre miere<sup>7</sup> etc. furent seisi par my la mayn vostre miere, qi heir etc.; issint qe la seisine si est acessorie et dependaunte de ceo qe vous tenez de nous. Par quei nous demaundoms jugement si vous ne devez respoudre a la tenaunce avaunt qe vous peusset pleder a la seisine.

*Berr.* Quaunt qe vous avet pledé de unqore chiet en evydençe qe B[eneyt] et Lucé ne poient estre seisis dez services par my la mayn Rose etc., a quei vous n'avendrez sauntz respoudre a la tenaunce. Et pur ceo vous demaundoms: Tenet vous de luy ou noun?

*Scrop.* Sire, il dient qe Benet Renwarde et Lucé sa femme si purchacerent ceaux services issauntz etc. d'un Thomas de Pridias. Sire, nous vous dioms qe mesme celui Thomas, de qi il preignent lour tittle de purchatz, rien n'avoit en ceaux services si noun com du droit Isaude sa femme. Et del houre q'il n'ount aultre tittle si noun de celui qe ne poet charger ne alierer fors en sa vie demene,<sup>8</sup> il ne poet dire *ut supra* q'il furent seisis *ut supra*, jugement si sur nous peusse avower.

*Herle.* Vostre r[espouns] poet avoir double<sup>9</sup> entendement; qar

<sup>1</sup> rien n'avoit *T.*    <sup>2</sup> covent a deprimes *D.*    <sup>3</sup> avowassetz sur *D.*; avenisiez sur *T.*    <sup>4</sup> qui *D.*    <sup>5</sup> natura ne serrai jeo resceu *D.*    <sup>6</sup> de *D.*    <sup>7</sup> *Ins.* qi heir *D.*    <sup>8</sup> *Ins.* ne *D.*    <sup>9</sup> *Ins.* e diverse *D.*



partition was made between them, such that the tenements in Trebedreke, where the taking was made, fell to the share of Oppe in allowance for other tenements that Rose had. Oppe was married to Benet Renward, on whose seisin [they] avow, and they had issue, Oppe died,<sup>1</sup> and Benet held by the curtesy of England, and for full ten years survived Rose, mother of Ralph, by whose [Rose's] hand they suppose that Benet was seised. [We pray] judgment whether they can lay the seisin of these services by the hand of Rose, since Benet himself held these tenements of the chief lord without mesne all his life, without Rose having anything in demesne or in seignory.

*Denom.* The true order of pleading is that one who wishes to counterplead the seisin of the services ought at the very outset to make himself privy, as by admitting the tenancy. So first confess whether you hold of us, and then say etc.

*Scrope.* No need for that, for if you avowed on someone who<sup>2</sup> never was *in rerum natura*, I should be [received] to say 'No such person: ready etc.,' without answering to the tenancy. So in this case. There could be no tenancy by Rose of the tenements which Benet himself held in chief.

*Denom.* Our avowry supposes two things. The first is that you hold of us. The second is that our father and mother were seised by the hand of your mother, whose heir [you are], so that the seisin is accessory to and dependent on the fact that you hold of us. Therefore we pray judgment whether you ought not to answer to the tenancy before you can plead about the seisin.

BEREFORD, C.J. All that you have yet pleaded is merely evidence that Benet and Lucy his wife could not be seised of the services by the hand of Rose, and to that you cannot get without answering to the tenancy. Therefore we ask you—Do you hold of him or not?

*Scrope.* Sir, they say that Benet and Lucy his wife purchased these services, issuing etc., from one Thomas de Pridias. We tell you, Sir, that this same Thomas, from whom they take their title by purchase, had nothing in these services, unless in the right of Iseult his wife. And as they have no title except from one who could not charge or alienate save for his own lifetime, [and] they cannot say that they were seised *ut supra*, judgment, whether they can avow upon us.

*Herle.* Your answer can have two meanings. One goes to

<sup>1</sup> She died without issue, so her share descended to her sister Rose, subject to Benet's curtesy. Then Benet

purchased the services to himself and a second wife in special tail.

<sup>2</sup> Or 'for something which.'

l'un chiet a countrepleder la seisine des services, en taunt come vous dites qu'il ne poient estre seisiz par my la mayn Rose etc. ; et tiel manere<sup>1</sup> countrepleder ne gist en aultri bouche fors en la bouche le tenaunt ; et issint l'un entendement auxi com vous fuisset privé et nostre tenaunt. L'autre entendement est auxi com vous fuisset estraunge et nous estraunge a<sup>2</sup> la seignurie, en taunt come vous dites qe Thomas de Pridias n'avoit rienz si noun come du droit sa femme, par qi alienacioun la seignourye en nostre persone ne se poet vestir ; et ceo amounte en<sup>3</sup> taunt come si vous deisset qe vous ne tenisset rien de nous. Par quei a user r[espouns] en court qe comprennent en luy ij. contraries, qe vous est privé et estraunge, que sunt duo contraria, n'entendoms mye qe ceo soit receyvable de court. Et pur ceo desclamet tot outre ou conisset qe vous tenez de nous.

*Denom (Johan).* Vous avez fait vostre tittle de purchatz d'un Thomas etc., et cel<sup>4</sup> tittle avoms defait, pur ceo qu'il n'out etc. si noun du droit I[saudef]. Et d'aulturepart le heir Is[audef]<sup>5</sup> freit bon avowerie huy ceo jour sur nous non obstante alienacione facta per Thomam de Pridias<sup>6</sup> patrem suum ; et s'il demourt seignour, donqe ensieut qe vous nient.

*Berr.* Donqe ne tienet<sup>7</sup> rien de luy.<sup>8</sup> Par Saint Piere vous graunterez ou dedirrez avaunt ceo qe vous departez !<sup>9</sup>

*Scrop.* Hors de soun fee. Prest etc.

Et alii econtra.

## II.<sup>10</sup>

Raufe se pleynt qe un J. atort prist ses avers.

*Casus.* Un fut seisi de certain tenemenz et morust seisi. Le heritage descendit a Roys et Opporcona filles. Opporcona prist baroun un Benette, qi heir J. est. B. avoit issue de Opp' qe devia vivaunt B. ; et Opp' pus devia ; pus devia Opp', B. prist autre femme et engendra J. Et fut la partie fet. Roys prist baroun ; avoit issue Raufe. B. purchasa les services de la purpartie Opp' q'il tent par la ley de Engleterre a ly et a sa femme et a les heirs de lour corps engendré de un T. Roys s'attourna a B. pur ceo qe la reversioun de ceo qe B. tynt fut a ly.

*Denom.* J. avowe la prise bon par la r[esoun] qe R. tent de ly un

<sup>1</sup> *Ins.* de D.    <sup>2</sup> en D, T.    <sup>3</sup> a T.    <sup>4</sup> tiel D.    <sup>5</sup> Isabelle D.    <sup>6</sup> Pride A.  
<sup>7</sup> tenetz D ; tenez T.    <sup>8</sup> *Ins.* qe D.    <sup>9</sup> departerez T.    <sup>10</sup> Text from M.

counterplead the seisin of the services, inasmuch as you say that [Benet and Lucy] could not be seised by the hand of Rose etc.; and this sort of counterpleading lies in no mouth but the mouth of the tenant; and so one meaning [of your plea] would make you privy and our tenant. The other meaning would make you a stranger, and us strangers to the seignory, inasmuch as you say that Thomas de Pridias had nothing except in right of his wife, so that the seignory could not vest in our person by his alienation, and this amounts to saying that you hold nothing of us. Therefore we do not think that you can be received in court to give an answer that comprises two contraries—namely, that you are both privy and stranger. Therefore you must either disclaim outright or confess that you hold of us.

*John Denom.* You have made your title by purchase from one Thomas etc. and that title we have defeated, because he had nothing save in right of Iseult. Moreover Iseult's heir might make a good avowry upon us to-day, notwithstanding the alienation made by Thomas de Pridias his father; and if he [the heir] still is lord, it follows that you are not.

BEREFORD, C.J. Then [say] that you hold nothing of [the avowant]. By Saint Peter you shall confess or deny before you depart!

*Scrop.* Outside his fee. Ready etc.

Issue joined.

## II.

Ralph complained that one J. wrongfully took his beasts. The case [was this:] One was seised of certain tenements and died seised. The heritage descended to Rose and Opportuna [his] daughters. Opportuna took husband one Benet, whose heir J. is. B[enet] had issue by Opportuna who died in his lifetime; she died; after her death B[enet] took another wife and begat J. Partition was made. Rose took husband and had issue Ralph. B[enet] purchased from one T. the services [issuing from] the share of Opportuna, which [share] he held as tenant by the curtesy, [and the services were conveyed] to him and his wife and the heirs of their bodies. Rose attorned to B[enet] because the reversion<sup>1</sup> of what he held belonged to her.

*Denom.* J[ohn] avows the taking good, for the reason that R[alph]

<sup>1</sup> The reversion expectant on this tenancy by the curtesy belonged to her, and she attorned to him as grantee of the seignory.

mees et un acre de terre en Cornewaille par homage etc. et par les services de vij. sous par an ; des queux services B. son pere fut seisi par my la mayn Rose com par my etc.<sup>1</sup> et pur le homage etc.

*Scrop.* Rose ne fut unques seisi en demene ne en service des tenemenz vivaunt B., par qei par my la meyn Rose ne put il estre seisi.

*Denom.* Les tenemenz furent tenuz de un A. Pridias par les services avaunt ditz issint qe nostre pere purchacea les services, par quele purchaz Rose s'attourna a nous, et nous seisi etc. *ut prius*.

*Scrop.* T. n'avoit rien en ceux tenemenz si noun del droit I. sa femme. Dont depuis qe vous clamez les services par purchaz de T. Pridias, qe nul droit n'avoit en les services, et liez la seisine par my la mayn Rose qe rien n'avoit, vivaunt B., en demene, jugement si de tiel purchaz par my la mayn cele qe rien etc. pussez etc.

*Ber.* Vous pledez auxi com vous ne fustes pas son tenaunt ; et ceo ne poez vous ; ne donez issue qe a ceo appent auxi com desclamer ; qe la comence s'avowerie qe vous estes son tenaunt ; et il avowe sur vous etc. ; et pur ceo etc. Item a ceo qe vous dites qe R. ne fut unques seisi, par taunt ne prove pas q'il fut seisi qe ceo n'est qe evidence.

*Denom.* La ou vous dites qe T. Pridias n'avoit rien en ceux tenemenz et R. ne fut unques seisi etc. ceux sount deux veies a pleder. Tenez vous al un.

*Scrop.* Hors de son fee : prest etc.

Et alii econtra. Et sic ad patriam.

### III.<sup>2</sup>

Johan le fiz Beneyte de Roigne fut ataché a respoundre a Rauf P. de play pur qei il prist cez avers etc.

*Denom.* avowa par la r[esoun] qe Rauf tynt de ly ij. acres de terre Cornwaylys par homage etc. ; des quels serviz B. et L. pere et mere Johan, qi heir il est, furent seisiz par my la meyn Roys mere Rauf, qi heir etc. ; et pur ceo qe l'omage fut arere etc. si avowe il etc.

*Scrop.* La ou vous avowe etc. et qe Beneite et Lucie furent seisiz par my la meyn Roise, nous vous dioms qe ceux tenemenz simul cum aliis tenementis furent en la seisine W. de Pentyre, qe

<sup>1</sup> *Om.* etc. *M.*

<sup>2</sup> Text from *P.*



holds of him a messuage and an acre of land in Cornwall by homage etc., and by the service of seven shillings a year, of which services B[enet] his father was seised by the hand of Rose as by [the hand] etc. And for the homage, [he avows].

*Scrope.* Rose was never seised in demesne or in service of the tenements in the lifetime of B[enet], so by her hand [the avowant] cannot be seised.

*Denom.* The tenements were held of one [T.] Pridias by the said services, and our father purchased the services; and upon the purchase Rose attorned to us, and we were seised etc. as above.

*Scrope.* T. had nothing in those tenements, except in right of his wife I[seult]. Therefore we pray judgment whether upon such a purchase and [on a seisin] by the hand of one who had nothing you can avow, since you claim the services by purchase from T. Pridias, who had no right in the services, and you lay the seisin by the hand of Rose, who had nothing in demesne in B[enet's] lifetime.

BEREFORD, C.J. You plead as if you were not his tenant. And that you cannot do, [for] you do not give such an issue as is appropriate, namely a disclaimer. For his avowry begins with this, that you are his tenant and he avows upon you. Therefore etc. Also as to what you say about R[ose] never being seised, that is not proved by Benet's being seised, which is only evidence.<sup>1</sup>

*Denom.* Whereas you say that T. Pridias had nothing in these tenements and that R[ose] never was seised, those are two different pleas. Hold to one.

*Scrope.* Outside his fee. Ready etc.

Issue joined. And so to the country.

### III.

John son of Benet [Renward] was attached to answer Ralph P. of a plea wherefore he took his beasts etc.

*Denom.* avowed for the reason that Ralph holds of him two acres Cornish by homage etc., of which services B[enet] and L[ucy], father and mother of John, whose heir he is, were seised by the hand of Rose, mother of Ralph, whose heir [he is]. And for homage arrear he avows etc.

*Scrope.* Whereas you avow etc. [and say] that Benet and Lucy were seised by the hand of Rose, we tell you that these tenements with others were in the seisin of W. de Pentyre, who held them of

<sup>1</sup> See the text, which may be understood in more than one manner.

ceux tenemenz tynt de T. de Pudias, issi qe W. morust seisi ; après qi mort entrerent Elizote et Royse cum filles et heir, issi qe ceux tenemenz dount il diount ceux serviz estre issaunz furent assignez en la purpartie Elizote, qe prit baroun Rogier Roygne, qe ceux tynt par la ley d'Engleterre après la morte Elizote, issi qe Royse, de qi seisine vous avowez, n'avoit unques riens en demesne ne en serviz. Et demaundoms jugement si de la seisine Royse qe riens n'avoit en demene ne en service pussez sur nous avowerie fere.

*Denom.* J'ay dit ij. choses : qe vous tenez de moy et qe moun auncestre fut seisi par mi la meyn vostre auncestre. Et le respouns qe vous donez si est a estraunger moy de la seignourie. Par qei il covent qe vous conisez la tenaunce ou qe vous desclamez.

*Scrop.* Il y ad un cas ou le tenaunt put estraunger soun seignour de la seignourye sanz r[espoudre] a la tenaunce.

*Ber.* Il affirme sur vous la seignourie et la tenaunce, a qei il covent qe vous r[esponez].

*Scrop.* Del houre qe nous voloms averer qe Roise n'avoit riens en demene, n'entendoms pas qe sur nous puisse avowerie meyntenir.

*Denom.* Thomas de P. nous graunta ceux serviz ; par quel graunt Roise s'atourna. Et demaundoms jugement s'il nous puise de cele seignourie estraunger saunz conustre la tenaunce.

*Scrop.* Ore demaundoms jugement, depuis qe B. vostre pere fut estraunge purchaseour de la seignourie ; et Royse, par mi qi vous biez ceste seisine recoverer, n'avoit unques rien, et T. qe graunta n'avoit en ceux serviz fors del droit Ys. sa femme, si sur nous puisez avower.

*Ber.* Quantqe vous ditz n'est si noun en evidence qe vous tenez de ly ou noun.

*Scrop.* Nous dioms qe W. le Peynt' tynt de T. cum del droit Is. sa femme ij. mees et ij. acres de terre Cornwayles par homage et par lez serviz *ut supra*. Dount de W. descendit a Elizote et Roise cum a filles et un heir ; entre ceux la purpartie se fit. Elizote prist baroun qe les tenemenz tynt par la ley d'Engleterre. Dount de E[lizote] pur ceo q'il morust saunz heir descendit le droit de sa purpartie a Roise, de Roise a Rauf etc. E desicum lez tenemenz ne furent chargez si noun de un homage, et la tenaunce si est revenu en soun primer estat, demaundoms jugement etc. s'il puise avowerie fere.

*Ber.* Donqe conusez vous qe vous tenez de ly.

*Scrop.* Hors de soun fee ; prest etc.

*Casus predicti placiti.* William le Peyntour fut seisi de certeyns

T. de Pridias; and W. died seised; and on his death Elizote and Rose entered as his daughters and heir; and the tenements whence, so they say, these services issue were assigned in the share of Elizote; she took husband [Benet], who held them by the curtesy after her death, so that Rose, on seisin [by whose hand] you avow, never had anything in demesne or in service. We pray judgment whether you can make avowry upon seisin [by the hand] of Rose, who had nothing in demesne or in service.

*Denom.* I have said two things: that you hold of me and that my ancestor was seised by the hand of your ancestor. The answer that you give goes to estrange me from the seignory. So you must either confess the tenancy or disclaim.

*Scrope.* There is a case in which the tenant can estrange the [would-be] lord from the seignory without answering to the tenancy.

BEREFORD, C.J. He affirms against you the seignory and the tenancy, and to that you must answer.

*Scrope.* As we are willing to aver that Rose had nothing in demesne, we do not think that you can maintain an avowry upon us.

*Denom.* Thomas de P. granted us these services, and on that grant Rose attorned. We pray judgment whether he can estrange us from the seignory without confessing the tenancy.

*Scrope.* And now we pray judgment whether you can avow upon us, since your father B[enet] was a stranger and purchaser of the seignory; and Rose, through whom you hope to recover this seisin, never had anything; and T. the grantor never had anything in these services, save in the right of I[seult] his wife.

BEREFORD, C.J. All that you have said is but evidence as to your holding or not holding of him.

*Scrope.* We say that W. [de Pentyre] held of T. in right of Is[eult, Thomas's] wife, two houses and two acres Cornish of land by homage and the aforesaid services. From W. it descended to Elizote and Rose as daughters and one heir. Partition was made between them. Elizote took a husband who held by the curtesy. From Elizote, since she died without heir [of her body], the right of her share descended to Rose, and from Rose to Ralph etc. We pray judgment whether he can avow, as the tenements were only charged with a homage and the tenancy has come back into its first estate.

BEREFORD, C.J. Then you confess that you hold of him.

*Scrope.* Outside his fee; ready etc.

*The case of the foregoing plea.* William [de Pentire] was seised



tenemenz et morust seisi. La heritage descendit a Elizote et Roise cum a filles et un heir. Elizote prit baroun un Benette, qi heir J. est. B. avoit issue de E., qe devia vivaunt B. et E. Puis devia E. B. prist altre femme, scil. Lucé, et engendra J. Et fut la purpartie fet. Roise prist baroun et<sup>1</sup> avoit issue Rauf. B. pourchacea les serviz de la purpartie Elizote, q'il tynt par la ley d'Engleterre, a ly et Lucé sa femme et a lez heirs de lour corps engendrez de un Thomas Pudias. Roise s'atourna a B. pur ceo qe la reversioun fut a ly de ceo qe B. tynt.

IV.<sup>2</sup>

Raufe Penwore se pleint de Johan Reneward e Jordan sun frere qe atort pristront un soen chival de Lundy en la feste del Annunciacioun Nostre Dame l'an terce en la ville de T. en un lieu qe est appellé P. et de illukes enchacea a son park etc.

*W. Denham* defendit etc. et avowa la prise bone e resonable, e par la resoun qe mesme cestui Raufe tient de lui un mies e une acre de terre Corwaleche par homage e par les services de viij. souz; des queux services Benete Renewarde e Lucé sa femme furent seisis par my la main une Roese mere cestui Raufe, com par mi la main lour verrai tenant; e pur le homage arrere par viij. anz si avowa etc. sur R. com sur sun verray tenant.

*Scrop.* Avowerie sur nous pur tieus services ne poez fere; qar nous dioms qe ceu mies e cele acre de terre ensemblement ove altrez tenemenz furent en la seisine un W. de Pentir, qe de ceux tene-  
menz morust seisi. Après qi mort sun heritage desc[endit] a ceste Roese e Oper com a deus filles e un heir. Ceu mies e cele acre de terre, en les queux il ad avowé, furent assignez a Oper pur sa purpartie. La quele Oper se lessa marier a Benet e il aveient issue. Oper devia e le issue devia. Benet tient ceux tenemenz par la ley d'Engleterre. Le quel Benete survesqui Roese. E issi vous dioms nous qe Benet e Lucé ne furent unkes seisi de ceux services par mi la main Roese. E demaundoms jugement desicom Roese n'avoit unkes rien en ces tenemenz ne en seignurie ne en demeine, mès il mesme enaunt del demene des chiefs seignurs etc.

*Denham.* Conussez la tenance et pus pledez par la.

*Scrop.* A ceo n'avom mestier, car nostre r[esponse] si est a la voidance de vostre avowerie.

*Hervi a Denh.* Aforcez vostre avowerie.

<sup>1</sup> *Om.* et P.

<sup>2</sup> Text from Y.



of certain tenements and died seised. The heritage descended to Elizote and Rose as daughters and one heir. Elizote took husband one Benet, whose heir John is. B[enet] had issue by E[lizote, which issue] died in their lifetime. Then E[lizote] died. B[enet] took another wife, namely Lucy, and begat J[ohn]. Partition was made. Rose took husband and had issue, Ralph. B[enet] purchased from one Thomas Pridias the services [issuing from] Elizote's share (which [share] he held by the curtesy), to him and Lucy his wife and the heirs of their bodies begotten. Rose attorned to B[enet] because the reversion of what B[enet] held belonged to her.

#### IV.

Ralph Penwore complains of John Reneward and Jordan his brother that wrongfully they took a horse of his on Monday the feast of the Annunciation of Our Lady in the third year in the vill of T. in a place called P. and drove it thence to [John's] pound etc.

*W. Denom* defended and avowed the taking good and reasonable, for the reason that Ralph himself holds of him a house and one acre Cornish of land by the service of eight shillings; of which services Benet Reneward and Lucy his wife were seised by the hand of one Rose, mother of Ralph, as by the hand of their very tenant. And for homage arrear for eight years etc. he avows upon R[alph] as upon his very tenant.

*Scrope.* An avowry on us for such services you ought not to make; for we say that this house and this acre of land with other tenements were in the seisin of one W. de Pentyre, who died seised thereof. On his death his heritage descended to the said Rose and Oper as to two daughters and one heir. This house and this acre of land, in which he avows, were assigned to Oper for her share. She married Benet and they had issue. She died, and the issue died. Benet held these tenements by the curtesy. He outlived Rose. And so we tell you that Benet and Lucy were never seised of these services by the hand of Rose. And we pray judgment, since Rose never had anything in these tenements either in seignory or in demesne, but [Benet] himself was always tenant in demesne [holding] of the chief lords etc.

*Denom.* Confess the tenancy and then plead that way.

*Scrope.* No need for that, for our answer goes to the avoidance of your avowry.

STANTON, J., to *Denom.* Strengthen your avowry.

*Denh.* Sire, nous dioms qe W. Pentir tient ceux tenemenz de T. Pridias. Le quel T. granta ceux services a Benete e Lucé sa femme e a les heirs de lour ij. corps engendrez. Par queu grant le dit W. se atturna; e pus Roese com fille e heir se atturna, dont cestui Johan si est fiz e heir Benet et Lucé etc.

*Scrop.* La ou il pernent lour title de ceste avowerie de ceo qe T. Pridias granta ces services a B[enet] e L[ucé] sa femme etc., nous dioms qe W. Pentir tient les tenemenz de T. Pridias e Isswide sa femme com del droit I., e q'il n'avoit rien en les tenemenz mès com baroun I. Demaundoms jugement si grant ou doun de celui qe nul droit n'avoit vous puet doner title de avowerie.

*Ber. a Scrop.* Vous pledez diversement, qar il ad avowé sur vous com sur son tenant, e vous lui r[espondez] en estrang[eant] lui del avowerie sanz r[espondre] a la tenance, ceo q'il ad primes attaché vers vous; pur ceo qe manere de pleder en prise des avers est, primes conustre la tenance ou dedire et puis pleder au service.

*Scrop.* Nous enparlerons. (Et revint et dist qe) W. Pentire tient deus mies e ij. acres de terre Corwaleches de T. Pridias par homage e par les services de viij. souz. Et demandoms jugement si eux en ceo mies e cele acre de terre par l'ent[iereté] des services puissent avower.

*Ber.* Qe r[espondez] a la tenance?

*Scrop.* Hors de son fee: prest etc.

Et alii contrarium.

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 154, Cornw.

John, son of Benet Reynward, and Jordan his brother were attached by a statute writ (*breve de statuto*) to answer Ralph of Penwore of a plea wherefore they took a horse of his and unlawfully detained it against gage and pledges etc. And thereupon Ralph, by John Hamelyn his attorney, says that on Monday, the feast of the Annunciation, A.R. 2 [1309],<sup>1</sup> in the vill of Trebedreke,<sup>2</sup> in a place called Penneythwran, they took a horse of his and unlawfully detained it against gage and pledges etc. until etc.: damages, forty shillings. And thereof he produces suit etc.

And John and Jordan,<sup>3</sup> by Nicholas Talgullan [his] attorney, comes and defends tort and force when etc., and answers for himself and Jordan. And he avows the taking good: and lawfully, for he says that Ralph holds of him a messuage and one acre Cornish of land by homage, fealty, and the service of eight shillings and fourpence; and of the homage, fealty, and service one Benet, father of [the avowant] and Lucy his wife, whose

<sup>1</sup> But March 25 was a Tuesday in 1309.

<sup>2</sup> Mod. Trebetherick in St. Minvers.

<sup>3</sup> Jordan seems to be mentioned erroneously. The verbs are in the singular.

*Denom.* Sir, we say that W. Pentyre held these tenements of T. Pridias. And T. granted these services to Benet and Lucy his wife and the heirs of their two bodies begotten. On that grant the said W. attorned,<sup>1</sup> and afterwards Rose attorned as his daughter and heir, and John [the avowant] is son and heir of Benet and Lucy etc.

*Scrope.* Whereas they take their title for this avowry from the fact that T. Pridias granted these services to B[enet] and L[ucy] his wife etc., we tell you that W. Pentyre held the tenements of T. Pridias and Iseult his wife in the right of I[seult], and that he [T.] had nothing save as her husband. We pray judgment whether the grant or gift of one who had nothing can give you title for an avowry.

BEREFORD, C.J., to *Scrope*. You are pleading at cross-purposes. He has avowed upon you as upon his tenant, and you answer by trying to estrange him from the avowry without answering to the tenancy, which at the outset he laid in you. In a replevin action the proper way to plead is first to confess or deny the tenancy and then to plead about the service.

*Scrope.* We will imparl. (And he came back and said :) W. Pentyre held two houses and two acres Cornish of land of T. Pridias by homage and the service of eight shillings. And we pray judgment whether they can [avow] for the whole of the services in this [one] house and [one] acre.

BEREFORD, C.J. What do you answer to the tenancy?

*Scrope.* Outside his fee: ready etc.

Issue joined.

#### Note from the Record (*continued*).

heir [the avowant] is, were seised by the hands of Roisia, mother of Ralph, whose heir he is, as by the hands of their very tenants. For he says in truth that Roisia sometime held the tenements of one Thomas Pridias, and that Thomas gave and granted the services of Roisia for the tenements to Benet and Lucy, to hold to them and the heirs of their bodies issuing, and that by reason of this gift and grant Roisia attorned herself for her services to Benet and Lucy. And because Ralph's homage was arrear to John on the day of the taking, he took the horse in the said place, which is parcel of the said tenements, within his fee, as well he might etc.

And Ralph says that John cannot avow the taking lawful; for he says that John took the beasts not within his fee, but outside his fee, and he prays that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded for the octave of St. Hilary.

<sup>1</sup> This seems impossible; and we cannot suggest any change in the initial that would improve matters.

## 14. OXEBURGH v. OXEWYKE.

Entré *ad terminum qui preteriit*, ou il mist avaunt ij. faitz de diverse auncestres en barre d'accioun et la party chacé a respoundre a ambedeux.

I.<sup>1</sup>

Un Nichole porta son bref d'entré *ad terminum qui preteriit* vers un homme et sa femme countaunt de la seisine un H[ughe]; de H[ughe] desc[endaunt] a Johan; de Johan a Nichole etc.; en lez queux il n'ount entré sy noun par Basille, a qi Hughe soun ael, qi heir etc., les lessa a terme qe passé est.

*Fris.* Johan par qi vous avet counté et Basille a qi Hughe etc. donerent et graunterent mesmes lez tenemenz a nous etc. et obligerent<sup>2</sup> eaux et lour heirs. Jugement si encountre le fait vos auncestres vers nous accioun poietz avoir.<sup>3</sup>

*Ing.* Nous avoms demaundé etc. de la seisine nostre ael Hughe,<sup>4</sup> dount si vous nous voillet barrer, mettet avaunt le fait de un, qar chesqun par sey est un barre. Par qei etc. a user ij. tittles *symul et semel* vous n'avendrez mye. Et d'autrepart, si jeo deisse qe ceo ne fust mye le fait Basille, ja ne serreit pluis avaunt enquys si ceo fust le fait Johan ou noun, nec econtra.

*Scrop.* Possible est qe Johan et B[asille] furent seisi en comune et q'il alierent etc. *ut supra*; et s'il<sup>5</sup> sont vos auncestres, a ceo qe nous dioms. Par quei auxi com le fait est en sei auxi covient il q'il soit mys avaunt pur barre. Jugement si vous ne devetz respoundre<sup>6</sup> ambedeux.

*Ingham.* Nyent plus avaunt qaunt a un fait ne me barretz qe vous me chargeretz<sup>7</sup> si vous fusset par voie d'accioun. Mez si vous fuisset par voie d'accioun, vous ne demaunderetz a la comune ley de la seisine de ij. auncestres a une foitz. Nyent plus hic.

*Fris.* Le quel q'il soit<sup>8</sup> le fait Johan ou le fait Basille, s'il furent vos auncestres vous devetz estre barré si vous ne peusset etc. Et d'autrepart, mesqe Johan et B[asille] eussent dyvers heirs et nous fussoms enpledez d'un aultre, nous voucheroms<sup>9</sup> l'un heir et l'autre; et par mesme la r[esoun] vous,<sup>10</sup> ou vous estes l'un heir et l'autre,<sup>11</sup>

<sup>1</sup> Text from A: compared with D, T. Headnote from A.

<sup>2</sup> obliga D, T.

<sup>3</sup> Om. avoir A; ins. D, T.

<sup>4</sup> Ins. etc. D, T.

<sup>5</sup> et il D, T.

<sup>6</sup> Ins. a D, T.

<sup>7</sup> chalengez T; chaleng' D.

<sup>8</sup> vit T.

<sup>9</sup> voucherioms D.

<sup>10</sup> Om. vous D.

<sup>11</sup> le heir l'un et l'autre D.



14. OXEBURGH *v.* OXEWYKE.<sup>1</sup>

Entry *ad terminum*: tenant rebuts by warranty of two ancestors in one deed. Demandant is driven to plead 'Not *their* deed.'

## I.

One Nicholas brought his writ of entry *ad terminum qui praeteriit* against a man and his wife, and counted on the seisin of one H[ugh], with descent from H[ugh] to John and from John to Nicholas; 'and into which they have no entry unless by Basilia, to whom Hugh [the demandant's] ancestor, whose heir [he is], demised for a term that has expired.'

*Friskeny.* John, through whom you counted, and Basilia, to whom Hugh [demised], granted these tenements to us etc., and bound themselves and their heirs. Judgment, whether you can have action against us contrary to the deed of your ancestors.

*Ingham.* We have demanded etc. on the seisin of our grandfather Hugh; so, if you would bar us, put forward the deed of some one person, for each by itself would be a bar. So you cannot get to use two titles *simul et semel*. Moreover, if I said that this is not Basilia's deed, still that would not settle the question<sup>2</sup> whether it was John's nor *vice versa*.

*Scrope.* It is possible that John and Basilia were seised in common, and that they alienated as above; and they are your ancestors, so we say. Therefore it behoves that if the deed is to be put forward as a bar it must be put forward just as it stands. Judgment, whether you ought not to answer as to both.

*Ingham.* You have no greater advantage when you are trying to bar me by a deed than you would have were you bringing an action. But if you were bringing an action, you could not at the common law demand on the seisin of two ancestors at once. No more in this case.

*Friskeny.* Be it the deed of John or the deed of Basilia, if they were your ancestors, you ought to be barred if you cannot [deny the deed]. Besides, even if John and B[asilia] had different heirs, if we were impleaded by a third person, we should vouch both heirs. Similarly, where you are the heir of both, the deed ought to bind

<sup>1</sup> This case is Fitz. *Double Plee*, 10.

<sup>2</sup> See the French text and the second report.

si deit<sup>1</sup> le fait par r[esoun] del un et par r[esoun] del aultre<sup>2</sup> en vostre persone lyer et estre barre a vous reboter etc.

*Berr.* Responez al fait vos auncestres.

*Ingham.* Nyent soun fait. Prest etc.

Et alii econtra.

## II.<sup>3</sup>

Nichol Auner<sup>4</sup> porta soun bref de entré vers Pieres de Astone.

*Frisk.*<sup>5</sup> Vous ne devez actioun avoir qe un Rogier vostre uncle et Johan Besael<sup>6</sup> vostre aunte qe heir etc.<sup>7</sup> obligerent etc. Juge-ment.

*Ynge.*<sup>8</sup> Vous mettez avaunt fet de ij. auncestres. En qe<sup>9</sup> noun les<sup>10</sup> volez user ?<sup>11</sup>

*Malm.* En le un et en l'autre, depuis qe vous estes<sup>12</sup> heir. Par quey conisset si ceo seit lour fet ou nemye.<sup>13</sup>

*Herle.* Il semble qe nous n'avoms mestier a respoudre al fet en la manere q'il les usent,<sup>14</sup> qe si jeo deyse nent le fet le Besael<sup>15</sup> et trové fut qe noun, unqore enquerreynt il<sup>16</sup> s'il fuise le fet Rogier, et issint serreyt ij. issues en un plee.<sup>17</sup>

*Fr.* Si nous fusoms par voie de vocher par ceo fet, il serroit voché cum heir le un et l'autre.<sup>18</sup> En mesme la manere nous le reboteroms.<sup>19</sup>

*Ing.* La court ne nous<sup>20</sup> chacera a ij. issues.

*Ber.*<sup>21</sup> Est ceo le fet vostre auncestre ou noun ? Et soit de l'autre com estre put.<sup>22</sup>

Qe noun : prest etc.<sup>23</sup>

Et alii econtra.

## III.<sup>24</sup>

Nichole le fiz Johan de Oxenforde porta sun bref de entré *ad terminum qui preteriit* vers W. de Oxeby e demanda un mies et une acre de terre ove les appurtenances en N.

<sup>1</sup> *Ins.* et *A*; *om.* *D*, *T*. <sup>2</sup> *Ins.* severalment *D*. <sup>3</sup> Text from *P*; compared with *R*, *B*. <sup>4</sup> *Alm*<sup>1</sup> *R*; *Dalmere B*. <sup>5</sup> *Piers R*; *Denom B*. <sup>6</sup> et *Alice R*, *B*. <sup>7</sup> *Ins.* nous donerent ceux tenemenz par ceux fait et *B*; *sim.* *R*. <sup>8</sup> *Ingham B*. <sup>9</sup> *qy R*; *qi B*. <sup>10</sup> *Om.* les *R*. <sup>11</sup> *Ins.* ceo faitz en barre *B*. <sup>12</sup> *Ins.* lour *B*. <sup>13</sup> *Om.* this sentence *P*; *ins.* *R*, *B*. <sup>14</sup> *qil* leusent *R*. <sup>15</sup> fet *Alice B*. <sup>16</sup> *Ins.* outre *R*; homme *B*. <sup>17</sup> *Ins.* qe serreit encontre ley *R*, *B*. <sup>18</sup> *Ins.* depus *qil* est heir du sank a lun et lautre *R*, *B*. <sup>19</sup> *Ins.* com heir lun et lautre *R*, *B*. <sup>20</sup> nous *B*; vous *P*, *R*. <sup>21</sup> *Ins.* Seit de ceo comme estre put *R*. <sup>22</sup> *Ber.* Soit de ceo come estre püst sount cez le fait vostre auncestre *B*. <sup>23</sup> *Herle* dedit le fet *R*, *B*. <sup>24</sup> Text from *Y* (f. 94d).

your person and bar and rebut you in respect of the one [ancestor] and the other.

BEREFORD, C.J. Answer to the deed of your ancestors.

*Ingham*. Not [their] deed.

Issue joined.

## II.<sup>1</sup>

Nicholas Auner brought his writ of entry against Peter of Aston.<sup>2</sup>

*Friskeny*. Action you cannot have, for Roger your uncle<sup>3</sup> and [Basilia]<sup>4</sup> your aunt, whose heir [you are], bound [themselves to warranty]. Judgment.

*Ingham*. You produce a deed of two ancestors. In whose name will you use it?

*Malberthorpe*. In both names, since you are heir [of both]. So confess whether it is their deed or not.

*Herle*. It seems that we have no need to answer to this deed in the manner in which they use it. For if I said 'Not Basilia's deed,' and it was found that it was not, there still would be an inquiry<sup>5</sup> whether it was not Roger's deed; and so there would be two issues of one plea.

*Friskeny*. If we were vouching by means of this deed, he could be vouched as the heir of both [ancestors]. In like wise shall we rebut him.<sup>6</sup>

*Ingham*. The Court will not drive us to two issues.

BEREFORD, C.J. Be that as it may, is this the deed of your ancestor or not?

[*Demandant's Counsel*]. Not: ready etc.

Issue joined.

## III.

Nicholas, son of John of Oxford, brought his writ of entry *ad terminum qui praeterit* against W. of Oxeby and demanded a house and an acre of land with the appurtenances in N.

<sup>1</sup> This report appears in the Old *Besael* (great-grandfather).  
Edition, p. 93.

<sup>2</sup> These are imaginary names.

<sup>3</sup> Really John your father.

<sup>4</sup> Observe how *Basile* has become

<sup>5</sup> See the version of this argument given in the first report.

<sup>6</sup> Some add 'as he is the heir of both.'

*Hengh.* defendi etc. et dist : Qaunt au mees, G. sun auncestre ne oust pas entré par Hughe com le bref suppose, einz par un F. de C. Et qaunt al acre de terre, nous dioms qe Johan vostre pere et Basille sa soer furent seisis de cele acre jointement, qe hors de lour seisine donerent cele acre a G. nostre pere, qi heir nous sumes, et obligent<sup>1</sup> eux et lour heirs a la garantie par lour fet, qe cy est; et si nous fuissoms par autre empledé, vous nous serriez tenu a la garantie par le fet vostre pere et vostre aunte. Jugement si encontre lour fet puissez rien demander.

*J. Denham.* Vous mettez avant le fet nos deus auncestres; les queux se pount prendre a deus issues et deus averemenz. Jugement si tieu fet pur nous barrer soit receivable.

*Frisq.* Ceo n'est pas inconvenient de estre reboté par le fet de deus auncestres; qar jeo pose qe ces deus auncestres eussent deus heirs, et le tenant fust enpledé par un estrange; bien lirreit au tenant vouchier l'un et l'autre par le fet lour auncestres; ergo lour fet serra barre etc.

*Ber.* Est ceo le fet voz auncestres ou noun?

A conustre ou dedire fust chacé par jugement.

*J. Denham.* Nent le fet nos auncestres: prest etc.

Et alii contrarium.

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 78d, Norf.

Nicholas son of John of Oxeburgh, by his attorney, demands against William of Oxewyke and Isabella his wife one messuage and two acres of land with the appurtenances in Oxeburgh<sup>2</sup> as his right and inheritance, and into which William and Isabella have no entry unless by Basilia, daughter of Hugh of Oxeburgh, to whom Hugh of Oxeburgh, grandfather of Nicholas, whose heir he is, demised for a term that has elapsed. And thereupon he says that Hugh, grandfather etc., was seised of the tenements with the appurtenances in his demesne as of fee and right in time of peace, in the time of Edward [I.], by taking thence esplees to the value etc.; and from Hugh the right etc. descended to one John as son and heir etc.; and from John the right etc. descended to Nicholas, the now demandant, as son and heir; and into which etc.; and thereof he produces suit etc.

And William and Isabella, by their attorney, come and defend his right when etc.; and they say that Nicholas can claim no right in the two acres of land etc.; for they say that Basilia and John her brother, father of Nicholas, gave and granted and by their charter confirmed the said tenements

<sup>1</sup> *Corr.* obligerent.

<sup>2</sup> Oxborough six miles S.W. of Swaffnam.



*Ingham* defended and said: As to the house, G. his ancestor had entry, not by Hugh, as the writ supposes, but by one F. of C. As to the acre of land, we say that John, your father, and Basilia his sister were seised of this acre jointly and out of their seisin gave this acre to G. our father, whose heir we are, and bound themselves and their heirs to warranty by their deed, which is here; and if we were impleaded by a third person, you would be bound to warrant us by the deed of your father and your aunt. Judgment whether you can demand anything against their deed.

*J. Denom.* You produce a deed of two of our ancestors, and [that] may lead to two averments and two issues. Judgment, whether such a deed be receivable as a bar against us.

*Friskeny.* There is no absurdity in being rebutted by the deed of two ancestors. I put case that the two had different heirs, and the tenant was impleaded by a stranger. It would clearly be lawful for him to vouch both of them by the deed of their ancestors. Therefore their deed is a good bar.

BEREFORD, C.J. Is it the deed of your ancestors or not?

He was driven by judgment to confess or deny.

*J. Denom.* Not the deed of our ancestors; ready etc.

Issue joined.

#### Note from the Record (*continued*).

with their appurtenances in frank-marriage with Isabella to William and the heirs of them begotten, to have and to hold to William and Isabella and their heirs aforesaid etc.; and they [Basilia and John] bound themselves and their heirs to warranty. And they [William and Isabella] proffer a certain charter under the names of Basilia and John, ancestors etc., which witnesses this. And they pray judgment whether he [Nicholas] can have an action etc. against the deed of Basilia and John, his ancestors.

And Nicholas says that this charter ought not to prejudice him etc.; for he says that the charter is not the deed of Basilia and John; and he prays that this be inquired by the country and the witnesses.

Issue is joined, and a *venire facias* is awarded for nine named witnesses and twelve jurors for the quindene of St. Hilary. And the said denied writing (*scriptum dedictum*) remains in the keeping of J. Bacun etc.

And as to the messuage etc. they [William and Isabella] deny that Hugh ever demised to Basilia, as Nicholas by his writ supposes, but rather (*immo*) one John of Oxeburgh; and of this they put themselves upon the country.

Issue is joined, and a *venire facias* is awarded for the said term [quindene of Hilary].

## 15. ANON.

[Attournement en pays.]

I.<sup>1</sup>

Nota par Berr. qe payement de rente de tenaunte en dowere ou a terme de vie par graunt de revercioun par fait en pays sauntz attournement de feaulté est auxi ferme lien com attournement en ceste court: ut accidit inter Johannem Slaerde et Hervicum etc.

II.<sup>2</sup>

*Quid iuris clamat* vers homme et sa femme de dowere sa femme, que viendrent et disoint que cesti que ore ad graunté<sup>3</sup> la revercion avaunt ces heures graunta<sup>4</sup> la revercion de ceux tenemenz a un autre par fait, a que nous attornasmes.<sup>5</sup> Le pleintif dit que il ne att[ornerent], prist. Et trové par *nisi prius* que cesti que graunta<sup>6</sup> la revercion ore par fine avant ceo temps avoit graunté<sup>7</sup> mesme la revercion a un autre, et que le home et la femme avoient<sup>8</sup> fait les services a cesti a que le graunt se fist, et en tiel forme fierent attornement saunz fealté faire.

*Berre.* En court si revercion de services soit graunté<sup>9</sup> il covient que le tenaunt face fealté en lieu d'attournement. Mès en pays attornement des services vaut plus que attornement de fealté.

Par quei<sup>10</sup> fuit agardé que le baron et la femme alassent<sup>11</sup> quite etc.

## 16. ANON.

Entré, ou la femme receu a defendre soun droit fust receu de chalanger le counte.

I.<sup>12</sup>

Bref fust porté vers un homme et sa femme qe plederent a enqueste. Le baroun fist defaute; par quei la femme vient en courte et pria d'estre receu. Et fust receu. Et pus chalenga le counte de ceo qe le demaundaunt avoit fait omissioun<sup>13</sup> d'un par my qi il dust avoir counté. Ou le demaundaunt au derrein, qaunt il ne poet

<sup>1</sup> Text from *A*: compared with *D*, *T*. <sup>2</sup> See note on opposite page.  
<sup>3</sup> graunt *F*. <sup>4</sup> graunt *F*. <sup>5</sup> vous att' *F*. <sup>6</sup> graunt *F*. <sup>7</sup> aver graunt *F*.  
<sup>8</sup> aver *F*. <sup>9</sup> graunt *F*. <sup>10</sup> que *F*. <sup>11</sup> ala *F*. <sup>12</sup> Text from *A*: compared with *D*, *T*. Headnote from *A*. <sup>13</sup> conis' *D*.

## 15. ANON.

Attornment in the country.

## I.

Note by BEREFORD, C.J., that payment of rent by tenant in dower or for term of life [to the grantee] of a reversion, [the grant being] by deed *en pais*, without any attornment of fealty, is as firm a bond as an attornment in this court: as happened between John Slaerd and Hervey etc.

II.<sup>1</sup>

*Quid iuris clamat* against man and wife in respect of wife's dower. They came and said that the grantor in the present case had already granted the reversion to another by deed, and to him we<sup>2</sup> attorned. The plaintiff averred that they did not attorn. By the *nisi prius* it was found that the grantor of the reversion in the present fine had previously granted the same reversion to another, and that the husband and wife had done the services to the grantee, and in this form had made attornment without doing fealty.

BEREFORD, C.J. In court if a reversion of services be granted, the tenant must do fealty by way of attornment. But in the country an attornment of services is worth more than attornment of fealty.

Therefore it was awarded that the husband and wife went quit etc.

## 16. ANON.

A wife received to defend her right is allowed to plead in abatement of the count.

## I.

A writ was brought against a man and his wife. They pleaded to an inquest. The husband made default. Thereupon the wife came into court and prayed to be received. She was received. Afterwards she challenged the count, because the demandant had made omission of a person through whom he ought to have counted. At length the

<sup>1</sup> This report has only been found in Fitzherbert's Abridgement, *Quid iuris clamat*, 45. Thence we take our text.

<sup>2</sup> 'You' in Fitz. Ab.

aultrement faire, tendist d'averer qe celui de qi etc. fust bastarde et la femme 'mulieré, prest etc.' Quod mirum videbatur aliquibus, desicom par statut ipsa non est recepta<sup>1</sup> nisi ad ius suum defendendum. Ideo mirum etc.

II.<sup>2</sup>

Nota ou la femme fu resceu a defendre sun droit en le *cui in vita*.  
*Wescote*. Countez.

*Scrop*. Vous estes receu a defendre vostre droit. Par quei r[esponez].

*Wescote*. Fetes la descente.

*Scrop*. De Alice a Johan com a fiz et heir : de Johan a W. com a fiz et heir.

*Wescote*. Nous dioms qe par my Johan ne poez action avoir, car il fust bastard : prest del averer.

Et alii contrarium.

## 17. ANON.

Nota hic qe la defaute la femme est la defaute le baroun.

I.<sup>3</sup>

Bref fust porté vers un homme et sa femme que firent defaute ; par quei le graunt *cape* issit. Al jour de graunt *cape* retourné il viendrent et gagerent la lay q'il ne furent pas somouns, et avoient jour etc. A quel jour le baroun vient et la femme nent. Et pur ceo qe le femme ne vient pas, si fust agardé al demaundaunt<sup>4</sup> seisine de terre etc.

II.<sup>5</sup>

William de Kenewyke porta son bref vers Richard de E. et Johane sa femme qe firent defaute etc. Au jour del graunt *cape* retorné Richard et Johane gagerent la ley etc. Aveynt jour a fere lour ley. Richard vynt et voleit avoir fet la ley, et J[ohane] ne vynt pas. Et pur ceo qe le baroun pout avoir eu sa femme etc. et non habuit, fut agardé qe le dit d[emaundaunt] recovere seisine de terre etc.

<sup>1</sup> admissa *D*.      <sup>2</sup> Text from *Y* (f. 94).      <sup>3</sup> Text from *A* : compared with *D*.  
Headnote from *A*.      <sup>4</sup> *Ins.* qil recoverast *D*.      <sup>5</sup> Text from *R* : compared with a shorter note without proper names in *P*.



demandant, when he could do nothing else, tendered an averment that the said person was bastard; and the woman said 'Legitimate.' This seemed strange to some, because by Statute<sup>1</sup> she is received only for the purpose of defending her right; and so it is strange etc.

## II.

A woman was received to defend her right in a *cui in vita*.

*Westcote*. Count [against us].

*Scrope*. You are received to defend your right. So answer.

*Westcote*. Make [your] descent.

*Scrope*. From Alice to John as son and heir; from John to W. as son and heir.

*Westcote*. We say that you cannot have action through John, for he was bastard: ready to aver it.

Issue joined.<sup>2</sup>

## 17. ANON.

A wife's default reckoned as her husband's default.

## I.<sup>3</sup>

A writ was brought against a man and his wife. They made default. The great *cape* issued. At the day when the great *cape* was returned, they came and waged their law that they were not summoned. A day was given them etc. At that day the husband came, and the wife did not. And because the wife did not come, seisin of the land was awarded to the demandant.

## II.

William de Kenewyke brought his writ against Richard of E. and Joan his wife. They made default etc. On the day when the great *cape* was returned Richard and Joan waged their law etc. They had a day to make their law. Richard came and wished to make the law. Joan did not come. And because the husband might have produced his wife, and did not, it was awarded that the demandant recover seisin of the land etc.

<sup>1</sup> Stat. Westm. II. c. 3.  
widely as to the wife's plea.

<sup>2</sup> It will be noticed that the two reports differ  
<sup>3</sup> This case is Fitz. *Default*, 18.

18. STAPLEFORD *v.* BARBOT.<sup>1</sup>

Aiel, ou il fust receu d'abatre le bref par fyn que prova joint tenaunce en aultre oed li après q'il avoyt fait defaute après defaute.

Roggier de Stapleford et Johan le Taillour porterunt bref d'ael vers Thomas Bardolfe qe fist defaute etc. Par quei la femme Thomas si vient en court et dit qe Thomas son baroun et lui avoient purchacé ceaux tenemenz jointement a eaux et a lour<sup>2</sup> heirs de lour corps issauntz et par tiele fin, et mist avaunt une partie de la fine; et del houre qe nous ne sumes pas nomez en le bref, jugement etc.

*Migg.* A ceo ne devez avenir si noun par un de ij. voies: ou par comune ley,<sup>3</sup> ou par statut. Ne par comune ley ne par statut, qar ele n'est pas nommé en le bref. Jugement si a nostre bref abatre deyve estre receu.

*Herle.* Statut qe doune a la femme de estre receu si est foundé sur collusioun del baroun, de ceo q'il ne veot prendre l'avauntage qe la ley luy doune a defendre la tenaunce sa femme; et del houre qe soun baroun purreit avoir abatu soun<sup>4</sup> bref com a dire *ut supra*, par my cel mespleder del baroun ele deyt estre receu, qar la cause del estatut est esteint<sup>5</sup> en sa persone. Par qei etc.

*Berr.* Si le baroun meist avaunt la fyn, ceo serroit aschune chose etc.

Et pus le baroun apparust et abaty le bref.

## Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 79d, Not.

Roger of Stapelforde and John son of Robert le Taillur of Bekingham aforetime demanded against Thomas Barbot of Bekingham one acre and a half of land and three roods of meadow with the appurtenances in Bekingham, whereof Robert the son of Walter of Bekingham, grandfather of Roger and great-grandfather of John, whose heir they are, was seised in his demesne as of fee on the day of his death: so that, the process having been continued between them, Thomas, after he had appeared in court, made default in three weeks from Easter last past, so that the sheriff was ordered to take the tenements into the King's hand and to summon him to be here on this day, to wit, the quindene of St. Michael, to hear his judgment thereof etc. And the sheriff now testifies that the land is taken [and that Thomas was] summoned etc. (*Note continued on opposite page.*)

<sup>1</sup> Text from A: compared with D, T. Headnote from A. <sup>2</sup> les D. <sup>3</sup> Om. to after next ley T. <sup>4</sup> le D. <sup>5</sup> atteinte D.

18. STAPLEFORD *v.* BARBOT.

*Semble* that a wife not named in the writ cannot be received on the ground that she holds jointly with her husband who has made default.

Roger of Stapleford and John the Tailor brought a writ of ael against Thomas [Barbot]. He made default etc. Thereupon his wife came into court and said that her husband and she had purchased these tenements jointly to them and to the heirs of their bodies issuing, by a certain fine. And she produced a 'part' of the fine, and prayed judgment as [she] was not named in the writ.

*Miggeley.* To that you cannot get, unless by [one of] two ways: either by common law or by Statute.<sup>1</sup> But neither by common law nor by Statute [can you do it], for [you] are not named in the writ. Judgment, whether you ought to be received to abate our writ.

*Herle.* The Statute which allows a wife to be received is founded on the collusion of the husband, who will not take the advantage given him by law for the defence of his wife's tenancy. And since the husband could have abated this writ by pleading [the joint tenancy] as above, the wife ought to be received because of this mispleader of the husband: for the reason of the Statute extends to her person. Therefore etc.

BEREFORD, C.J. If the husband produced the fine, that indeed would be something.

Afterwards the husband appeared and abated the writ.<sup>2</sup>

Note from the Record (*continued*).

And now come as well Roger and John by their attorney as Thomas. And Roger and John straitly (*precise*) betake themselves to the said default that Thomas made three weeks from Easter after an appearance as aforesaid etc.

And Thomas says that he holds the tenements jointly with one Maud his wife, by a fine levied in the King's court, a 'part' of which he proffers, and which witnesses that heretofore in the court of Edward [I.] before R. of Hengham and his fellows, justices of the said King Edward of the Bench, on the octave of St. Martin, A.R. 31, a fine was levied between Thomas and Maud his wife, plaintiffs, and Thomas of Cresacre, deforciant of a messuage and two carucates of land, thirty acres of meadow, four acres of wood, and ten shillingworths of rent with the appurtenances in

<sup>1</sup> Stat. Westm. II. c. 3.

<sup>2</sup> The record does not show that the husband's attempt succeeded.

Note from the Record (*continued*).

Bekingham, whereof the tenements now demanded are parcel etc., to wit, that Thomas Barbot knowledged the tenements with the appurtenances to be the right of Thomas of Cresacre, and for this etc. Thomas of Cresacre granted the tenements with the appurtenances to Thomas and Maud and rendered the same to them to have and to hold to Thomas and Maud and the heirs whom Thomas should beget of the body of Maud—which Maud is not named in the writ etc., and without whom [he cannot answer] etc.; and therefore he prays judgment of the writ etc. (*Note continued on opposite page.*)

## 19. HORKESELEY v. POWER.

Entré, ou il alegge joynt feffement de parcel a ly et a sa femme par un qe fust tenant de ceo jour de bref purchacé par fait de puisné date qe le bref fust purchacé.

I.<sup>1</sup>

Un William porta bref d'entré vers Robert Power etc.

*Toud.* Qaunt a la tierce partie de sa demaunde nostre femme est joynte ove nous al feffement etc. Jugement du bref, q'ele n'est pas nommé etc.

*Malm.* Quei responez vous en droit del<sup>2</sup> ij. parties?

*Toud.* C'est un precipe<sup>3</sup>; s'il abate en partie ergo en tot. (Et ostendit cartam quod dictum etc. testatur, salve qe la date de la date<sup>4</sup> si<sup>5</sup> estoit de puisné temps qe le bref etc.)

*Malb.* Sire, la date de cele chartre si est puisné qe n'est nostre bref; par quei n'entendoms mye qe par nul<sup>6</sup> fait après nostre bref etc. deive nostre bref abatre.

*Toud.* Le jour del bref purchacé un Hamond fust seisi de la tierce partie de vostre demaunde; le quel H[amond] enfeffa Robert et sa femme<sup>7</sup>, et ele nyent nommé. Jugement etc.

*Hervi.* Vostre respouns n'est pas respouns si vous ne diez qe H[amond] tient le jour etc. et unqore tient etc.

*Toud.* Al temps qaunt il porta soun bref<sup>8</sup> il suppos[a] qe nous pooms<sup>9</sup> sa demaunde rendre, en quel temps H[amond] seisi, et par taunt soun bref malveys adonqe et unqore malveys etc. Et d'autre-part meyndre duresse est d'abatre cesti bref et luy chacer a user soun bref vers nous deux, ou nous purrioms joyntement vouchier, qe a meyntenir ceo bref vers nous soul, et par taunt perdroms nostre

<sup>1</sup> Text from *A*: compared with *D*, *T*. Headnote from *A*. <sup>2</sup> de les *T*; de *D*. <sup>3</sup> *Ins.* qe *D*. <sup>4</sup> charte *D*. <sup>5</sup> se *A*; si *D*, *T*. <sup>6</sup> *Ins.* feffement *D*. <sup>7</sup> *Ins.* etc. *D*. <sup>8</sup> *Om.* to after next bref *T*. <sup>9</sup> poeymes *D*.



Note from the Record (*continued*),

And Roger and John son of Robert say that—whereas Thomas Barbot aforetime appeared in court etc., and then alleged nothing of the said ‘exception,’ but afterwards made a default, to cure which he now says nothing and can say nothing, and he only says that he holds the tenements jointly with Maud by the fine—they pray judgment whether Thomas Barbot ought to be admitted in this behalf to the quashing of their writ after the said default which is not cured.

19. HORKESLEY *v.* POWER.

A tenant (*A.*) is suffered to plead that on the day of writ purchased *H.* held a third of the tenements, *A.* having produced a deed showing that since then *H.* enfeoffed *A.* and *A.*’s wife, who is not being sued.

## I.

One William brought a writ of entry against Robert Power etc.

*Toudeby.* As to the third part of his demand, our wife is joint with us by the feoffment etc. Judgment of the writ, for she is not named etc.)

*Malberthorpe.* What say you as to the other two parts?

*Toudeby.* This is a *praecipe*. If it is abated in part, it is abated altogether. (And he produced a charter which witnessed what he had said, save that the date of the [charter] was later than that of the writ etc.)

*Malberthorpe.* Sir, the date of this charter is later than our writ. Therefore we do not think that he can abate our writ by any deed made after our writ.

*Toudeby.* On the day of writ purchased one Hamond was seised of the third part of your demand, and he enfeoffed Robert and his wife, and she is not named. Judgment etc.

STANTON, J. Your answer is no answer, unless you say that *H*[amond] held on the day [of writ purchased], and still holds.

*Toudeby.* At the time when he brought his writ he supposed that we could render him his demand, and at that time Hamond was seised, and therefore his writ was bad then and is bad still. Besides, it would be less hardship to abate this writ and drive him to use a writ against us two, wherein we might vouch jointly, than to maintain this writ against us alone, whereby we should lose our voucher. More-

voucher. Estre ceo qaunt Hamond dona etc. a Robert et sa femme, auxi bien se vesti le fraunctenement en la persone la femme com a<sup>1</sup> la persone Robert. Dount si Robert soul fust chacé ore a respoundre, ou devendra le fraunctenement en la persone<sup>2</sup> la femme?

*Berr.* dit a *Malb.* Responez si H[amond] fust seisi le jour etc. et si etc.

*Malb.* Robert Power pleynement tenaunt le jour de nostre bref purchacé. Prest etc. Et d'autrepart jeo ne demaunde mye par tierce partye, einz par mies et par carué. Par quei il covendreyt qe la nountenure fust acordaunt a la demaunde.

*Berr.* Il use par tot<sup>3</sup> a soun peril, qar si trové soit qe H[amond] tient une carué de terre, le bref est a terre, et si contra, tot est gaigné;<sup>4</sup> par quei il ne covent respoundre du remenaunt.

*Toud.* Qaunt a la tierce partie, forspris ij. molyns, Hamounde tenaunt le jour du bref etc.

Et alii econtra. Ideo etc.

## II.<sup>5</sup>

William de Horsley<sup>6</sup> porta son bref vers Robert le Poel<sup>7</sup> et demaunda deux mies et certeyne terre.

*Cant.* Nous ne poms rendre etc., qe nous n'avoms rien en la terce partie de lour demaunde si noun joynt ove Margerie nostre femme nent nomé etc. Jugement etc. Et veet issi chartre qe testmoine.

Et fut la date de la chartre de pugné temps qe ne fut la date du bref. Par qey Hervi<sup>8</sup> ly dit q'il dust autre chose dire.

*Toud.*<sup>9</sup> De ceo qe la date est pusné, ceo n'est pas countre nous, qe tiel est le fet qe en temps du bref purchacé si fut de cele terce partie tenaunt un Hamound de Sottone qe pus ceo bref purchacé nous enfeffa etc.

*Malm.* De ceo qe la date est prove ceo<sup>10</sup> r[espouns] est double, qe a primes chef ou vous dites qe Hamound tynt etc. il savoure la<sup>11</sup> noun tenure, et pus dites vous qe vous et Margerie vostre femme estes feffé joyntement. Par qey dites nous a quel vous volet tenir.<sup>12</sup>

*Toud.* Jeo ne vaivera pas moun fet q'est tiele comme jeo ay dit.

*Malm.* Tenet donqe a l'un, qe ley solom vostre dit ne seoffre poynt<sup>13</sup> l'un et l'autre, qe de taunt qe vous ne vous osez pas

<sup>1</sup> en *D.*    <sup>2</sup> *Om.* en la persone *D.*    <sup>3</sup> tut *T*; tout or cout *D.*    <sup>4</sup> estraunge *D.*  
<sup>5</sup> Text from *R*: compared with *M, P.*    <sup>6</sup> Horkesle *M, P.*    <sup>7</sup> Power *M*; le Priour de *E. P.*    <sup>8</sup> *Rep.* Hervi *R.*    <sup>9</sup> *Stant.* Ditez autre chose *M*; Staunt. Dites autre chose. *Toud. P.*    <sup>10</sup> *Malb.* Ceo *M, P.*    <sup>11</sup> etc. cest auxi com *M*; ceo est un *P.*    <sup>12</sup> *Om.* next speech and condense, *P.*    <sup>13</sup> qe vous ne poiez avoir *M.*

over, when Hamond gave etc. to Robert and his wife, the freehold vested as well in her person as in his. So if Robert by himself were now driven to answer, what would become of the freehold in the wife's person ?<sup>1</sup>

BEREFORD, C.J., said to *Malberthorpe*: Answer whether Hamond was seised on the day etc. and whether etc.

*Malberthorpe*. Robert Power was fully tenant on the day of our writ purchased: ready etc. Besides, I am not demanding a third part. I demand by way of messuages and carucates. Therefore it behoves that the non-tenure should accord with the demand.

BEREFORD, C.J. He [pleads the non-tenure] wholly at his peril, for if it be found that Hamond held a carucate of land, the writ falls to the ground; and if the reverse, all is gained. So there is no need to answer about the residue.

*Toudeby*. As to the third part, except two mills, Hamond was tenant on the day of writ [purchased].

Issue joined. Therefore etc.

## II.

William de Horsley brought his writ against Robert le Poel and demanded two houses and certain lands.

*Cambridge*. We cannot render [their demand], for we have nothing in one third part of their demand, save jointly with Margery our wife, who is not named [in the writ]. Judgment etc. And see here a charter which witnesses it.

And the date of the charter was later than the date of the writ. So STANTON, J., told him to say something else.

*Toudeby*. As to the date being later, that is not against us, for the fact is that at the time of writ purchased one Hamond of Sutton was tenant of this third part, and after writ purchased he enfeoffed [us and our wife.]

*Malberthorpe*. This answer is double; <sup>2</sup> for at the outset, when you say that Hamond held, that savours of a [plea of] non-tenure; and then you say that you and Margery your wife are jointly enfeoffed. Therefore tell us to which [plea] you will hold.

*Toudeby*. I shall not waive my deed, and it is such as I have said.

*Malberthorpe*. Then hold to one [or the other], for, if we take your word, the law will not suffer both; for, inasmuch as you do not

<sup>1</sup> Or 'of the freehold of the wife.'

<sup>2</sup> One book has some additional words which are not very plain.

ore de la tenaunce vous ne poet pas allegger exceptioun de noun tenure.

*Hervi.*<sup>1</sup> La nature<sup>2</sup> d'entrer cele exceptioun est 'non tenet nec tenuit etc.'; et vous grauntez qe vous tenez. Par qey etc.

*Toud.* Ne moi<sup>3</sup> soul, qe del estat qe nous avoms nous ne pouns voucher soul ne rendre.

*Cant.* Par le doun Hamound acrust fraunc tenement en la persone Margerie, de<sup>4</sup> qey si ele fust osté saunz ceo q'ele fut partie, homme la freyt tort. Jugement etc.

*Toud.* Si nous ussoms pris soul estat a jug[ement]<sup>5</sup> d'ascune gent nous ne ussoms pas abaté<sup>6</sup> le bref. Mès de l'oure qe nous n'avoms mye estat soul mès joynt ove M[argerie], ensi qe nul de ceux deux paroles vers nous n'est veray, ne le 'tenet' ne le 'tenuit' ne nous ne pouns rendre, jugement.

*Hervi.* Quidez vous<sup>7</sup> abatre cesti bref si homme ne put entrer vostre exceptioun solom la manere de court usé de sa arere?

*Toud.* Si jeo deise qe au temps du bref etc. Hamound la tynt et a ore un estrange, ne ert ceo resevable? Et moun dit ne amounte a nent plus de l'oure qe nous ne la tenoms pas soul ore.

*Berr.*<sup>8</sup> Solom<sup>9</sup> fet covent il q'il r[espoigne]. Dount ceo q'il tend d'averer qe Hamound tint etc. fet<sup>10</sup> sa joyntenaunce bone; et homme ne ly put poynt oster de la verité de son fet dount il demaunde jugement.

*Malm.* Au temps du bref etc. il soul tenaunt de l'enter dez tenemenz mis en vewe et demaunde: prest etc.

*Hervi.* Homme<sup>11</sup> ne entra ja<sup>12</sup> en roule<sup>13</sup> de vostre vewe mès solum demande etc.

*Berr.* N'est pas la demaunde par manere?<sup>14</sup>

*Malm.* Noun, mès par qauntité des tenemenz.<sup>15</sup>

*Toud.* Vous faites la vewe de l'enter du manoir.<sup>16</sup>

*Berr.* Donqe est bon qe vous aviset. (Et hoc dixit<sup>17</sup> quia cum misa inquisitionis non debuit fieri super tenementum petitum<sup>18</sup> in visu set in petitione, potuit asserere<sup>19</sup> se<sup>20</sup> petivisse alia tenementa quam petiit.)

*Toud.* Au temps du bref etc. Hamonde tynt la terce partie etc. scil. del mies, terre, rente, bois et pree, pasture: prest etc.

<sup>1</sup> Stant. *M.*, *P.*    <sup>2</sup> Le man' *M.*; La manere *P.*    <sup>3</sup> mye *M.*    <sup>4</sup> par *M.*  
<sup>5</sup> al dit *M.*, *P.*    <sup>6</sup> nous fussoms pas receu de abatre *M.*; *sim.* *P.*    <sup>7</sup> Quidez par  
vous feyntise malviez (?) *M.*; Quidez vous par un makem' *P.*    <sup>8</sup> Alio die *Berr. M.*  
<sup>9</sup> *Ins.* son *M.*, *P.*    <sup>10</sup> etc. cest a *M.*; daverer qe *M.* est joynt et fet *P.*    <sup>11</sup> Hom'  
*R.*    <sup>12</sup> a *R.*; mettra ja *M.*    <sup>13</sup> ne put jammes enrouler *P.*    <sup>14</sup> de man' *M.*;  
du man' *P.*    <sup>15</sup> mes de certeyns tenemenz dedeinz etc. *P.*    <sup>16</sup> *Om.* two speeches  
*P.*    <sup>17</sup> *Om.* Et hoc dixit *R.*; *ins.* *M.*    <sup>18</sup> *Om.* petitum *R.*; *ins.* *M.*    <sup>19</sup> asserere *R.*,  
<sup>20</sup> *Om.* se *R.*; *ins.* *M.*



now oust yourself from the tenancy, you cannot allege a plea of non-tenure.

STANTON, J. The way to enrol this plea<sup>1</sup> is 'he does not and did not hold etc.' And you admit that you do hold. Therefore etc.

Toudeby. But not as sole tenant, for in respect of the estate that we hold we alone could not vouch or make a render.

Cambridge.<sup>2</sup> By Hamond's gift freehold accrued in the person of Margery; and if she was ousted without being made party, a wrong would be done her. Judgment etc.

Toudeby. If we had taken a sole estate, then, in the opinion of some folk, we should not have abated the writ. But since we have an estate not sole, but joint with Margery, so that neither of these two words, *tenet* and *tenuit*, is true against us, and we cannot render [the tenements, we pray] judgment.

STANTON, J. Think you to abate this writ<sup>3</sup> if your plea cannot be entered according to the hitherto accustomed practice of the court?

Toudeby. If I said that at the time of writ [purchased] Hamond held and now a stranger holds, would not that be receivable? And what I say comes to the same, since we do not hold solely.

BEREFORD, C.J. He must give his answer according to the facts. So the averment that he tenders about Hamond having held makes his joint tenancy good. And he is not to be ousted from the truth of his deed, whereof he prays judgment.

Malberthorpe. At the time of writ issued he was sole tenant of the whole of the tenements put in view and demand: ready etc.

STANTON, J. On the roll nothing shall ever be said of your view, but only your demand etc.

BEREFORD, C.J. Did you not demand it as a manor?

Malberthorpe. No, as a certain quantity of tenements.

Toudeby. You made the view of the whole manor.

BEREFORD, C.J. Then you had better be careful. (This he said for the mise for the inquest ought to speak not of the tenement [put in] view but of the tenement demanded, and he might assert that he demanded other tenements than he did demand.)<sup>4</sup>

Toudeby. At the time of writ [purchased] Hamond held the third part, namely, of the messuage, land, rent, wood, meadow, and pasture: ready etc.

<sup>1</sup> If it is a plea of non-tenure.

<sup>2</sup> On the same side.

<sup>3</sup> Some add 'by a wicked fiction' or 'by a trick.'

<sup>4</sup> The text does not seem to be correct. This note is not found in all our books.

Et furent en demaunde deux molyns ?

*Malm.* Qey r[espondez] vous des molyns ?

*Berr.* Noun tenure de une acre de terre de vostre demaunde abate le bref.

Et recipitur verificatio.<sup>1</sup>

### III.<sup>2</sup>

Wautier de Horkesley porta sun bref d'entré *ad terminum qui preteriit* vers Robert le Poer e demanda un mes e ij. molins et v. carués<sup>3</sup> de terre ove les appurtenans en P.

*Touth.* defendit e dist : Qaunt a la terce partie de vostre demande nous tenoms jointement ove une Katherine nostre femme e par ceste chartre : jugement.

*Willuby.* Quei r[espondez] vous au remenant ?

*Touth.* Si la *precipe* s'en abate en partie, il abatera en le tut.

La chartre fust lue, e la date voleit qe la chartre fut fete longe temps après le bref purchacé.

*Willuby.* E nous jugement si tieu feffement après le bref purchacé nous deit grever, desicum par tieu feffement franc tenement a eux encontre nous ne poet acrestre.

*Touth.* Nous dioms qe Hamond de Suttone fut seisi de la terce partie de vostre demande le jour de vostre bref purchacé, qe hors de sa seisine les tenemenz dona a nous e a Katherine nostre feme. Jugement etc.

*Hervi.* Si vous seez empledee d'autri franc tenement, e pus après les purchassez, issi poez encombrer vostre estat demeine si vous volez.

*Touth.* Nous vous avom dist nostre fet, e a vous est a juger.

*Ber.* Vous ditez qe Hamond tient les tenemenz jour de bref purchacé, e pus vous enfeffa e vostre femme par cele chartre etc. Vostre excepcion si tende a deus issues, scil. a trier la nountenure e le joint feffement, e issi deus averementz, q'est encontre lei, qar l'enroullement deit dire 'que tenet et tenuit.'

*Touth.* Nous ne voloms mie 'que tenet' mès 'que tenuit,' qar jeo pose qe vous portissez vostre bref vers moy de la tenance Johan, e pus le bref purchacé J. ceux tenemenz alienast a Willieme, jeo entenke qe ceo serroit bon r[espons] a dire qe Johan tient les tenemenz le jour del bref purchacé, tut ne les tient mie ore etc.

Et alio die *Touth.* Nous dioms qe Hamon de Suttone fut seisi de la terce partie de vostre demande jour du bref purchacé, qe hors

<sup>1</sup> bref. Sic ad patriam *M*; *sim.* *P.*

<sup>2</sup> Text from *Y* (l. 95).

<sup>3</sup> carue *Y.*

Two mills were in the demand.

*Malberthorpe.* What about the mills?

BEREFORD, C.J. Non-tenure of one acre of your demand [would] abate the writ.

The averment is received. [And so to the country.]

### III.

Walter of Horkesley brought his writ of entry *ad terminum qui praeteriit* against Robert le Poer and demanded a messuage and two mills and five carucates of land with the appurtenances in P.

*Toudeby* defended and said: As to the third part of your demand we hold jointly with one Katherine our wife by this charter. Judgment.

*Willoughby.* What say you as to the residue?

*Toudeby.* If the *praecipe* is abated in part, it is wholly abated.

The charter was read, and the date showed that it was made long after writ purchased.

*Willoughby.* And we pray judgment whether such a feoffment after writ purchased should hurt us, since by such a feoffment no freehold could accrue to you against us.

*Toudeby.* We say that Hamond of Sutton was seised of the third part of your demand on the day of writ purchased, and that out of his seisin he gave the tenements to us and Katherine our wife. Judgment etc.

STANTON, J. If you are impleaded for another man's freehold, and then you purchase it, you can impair your position in that way if you please to do so.

*Toudeby.* We have told our facts. It is for you to judge.

BEREFORD, C.J. You say that Hamond held the tenements on the day of writ purchased, and then he enfeoffed you and your wife by this charter etc. Your plea tends to two issues, to wit, to try the non-tenure and the joint feoffment. So there are two averments, and that is against law. The enrolment should say 'neither held nor holds.'

*Toudeby.* We want the 'held not' and not the 'holds not.' Put case you bring your writ against me for the tenancy of John, and after writ purchased John alienates these tenements to William: I think it would be a good answer that John held them on the day of writ purchased, though he does not hold them now.

On another day, *Toudeby.* We say that Hamond of Sutton was seised of the third part of your demand on the day of writ

de sa seisine eneffa Robert e Katerine sa femme, sanz ceo qe R[obert] rien ne oust en les tenemenz.

*Malm.* Quei r[esponez] al 'nec tenet nec tenuit'?

*Bereforde.* Si H[amond] tient le jour de bref purchacé e pus eneffat R[obert] e K[aterine], issi R[obert] n'est pas ore soul tenant.

*Touth.* Ceo serroit grant meschiefe a nous a estre a tiel averement. E meindre meschiefe est qe ceo bref s'en abat qe nous perdom nostre garantie vers Hamond.

*Tou.* defendit les paroles e dit: Qaunt a la 3<sup>e</sup> partie du mees, e de la terre, pree, boys e rente, vous dioms qe H[amond] fust tenant.

*Malm.* Quei r[esponez] a molins?

*Touth.* Si abate en partie, ergo en le tut.

*Ber.* Si nountenure<sup>1</sup> soit trové en une acre, tut est alé pur vin e chandoil.

*Malm.* Qe [Robert] fust tenant com lour bref suppose, e nent H[amond] jour del bref purchacé: prest del averer.

Et alii contrarium.

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 154d, Essex.

William of Horkesleye demands against Robert Power one messuage, two mills, one carucate of land, ten acres of meadow, sixteen acres of pasture, sixty acres of wood, and three score and sixteen shillingworths of rent in Aldham, Magna Teye and Coppeford<sup>2</sup> as his right and inheritance, and [as those] into which Robert has no entry unless after the demise which Walter of Horkesleye, grandfather of William, whose heir he is, made to Lawrence de Sancto Martino for a term which has elapsed, and which after that term ought to revert to William. And thereupon William says that Walter his grandfather was seised of the tenements as of fee and right in time of peace, in the time of Henry III., by taking thence esplees to the value etc.; and from him the right descended to one Robert as son and heir, and from him to William, the now demandant, as son and heir, and into which etc. And thereof he produces suit etc.

And Robert comes and defends [William's] right when etc.; and he says that he cannot render the tenements, for as to a third part of the messuage, land, meadow, pasture, wood and rent, he says that the said third part is a third part of the manor of Little Fordham; and that he holds that third part jointly with Katherine his wife by the charter of one Hamo, son of William of Sutton, which he proffers and which witnesses that Hamo granted, gave and by his charter confirmed to Robert and Katherine that third part of the manor of Little Fordham in the said county which William, father of Hamo, whose heir he is, sometime purchased to himself and his heirs, and which

<sup>1</sup> nountenu Y.      <sup>2</sup> Aldham, Great Tey, Copford and Fordham lie close together near Colchester.



purchased, and that out of his seisin he enfeoffed Robert and Katherine his wife, without Robert having anything in the tenements.

*Malberthorpe.* What say you to the [point touching] *nec tenet, nec tenuit*?

BEREFORD, C.J. If H[amond] held on the day of writ purchased and afterwards enfeoffed R[obert] and K[atherine], then [you can say that] R[obert] is not now sole tenant.

*Toudeby.* It would be a great hardship to us to stand to that averment. It is a less hardship that this writ should abate than that we should lose our warranty against Hamond.

*Toudeby* defended the words [of form] and said: As to the third part of the house and of the land, meadow, wood and rent, we tell you that Hamond was tenant.

*Malberthorpe.* What of the mills?

*Toudeby.* If the writ is abated in part, it is wholly abated.

BEREFORD, C.J. If non-tenure of a single acre be found, all is gone for wine and candle.<sup>1</sup>

*Malberthorpe.* Ready to aver that on the day of writ purchased R[obert] was tenant as our writ supposes, and not H[amond].

Issue joined.

#### Note from the Record (*continued*).

after the decease of William came by inheritance to Hamo (except certain lands and alder copses (*alnetis*) which Robert de Suttone holds by the demise of Hamo with the rent thereof etc.), to have and to hold the said third part to Robert [Power] and Katherine and the heirs of their bodies to be begotten; the date of which [charter] is on [October 20, 1308] Sunday next after the feast of St. Luke the Evangelist in A.R. 2; and Katherine is not named in the writ; and without her etc.; and thereupon he prays judgment of the writ etc.

And William says that by pretext of the charter his writ ought not to be quashed in this behalf; for he says that he purchased his writ against Robert a long time before the making of the charter, to wit, on the 8th of April, A. R. 1 [A.D. 1308]; and on that day Robert was sole tenant of the entirety of the tenements; and this he is ready to aver; and thereupon he prays judgment etc.

And Robert says that on the said 8th day of April he was not tenant of the entirety (*de integro*) of the tenements as William says, but rather that Hamo of Suttone was tenant of the said third part of the tenements, which [part] is contained (*continetur*) in the charter; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the morrow of the Purification.

<sup>1</sup> That is, 'for good and all.' See our vol. ii. p. lxix.

## 20. BISHOPSGATE (PRIOR OF) v. HABENHACHE.

Replevine, ou il mist avaunt feffement le feffeur le avowaunt fait a soun feffour, et il receu d'alegger continuaunce de seisine avaunt le passage etc., et autrement r[espoundreit] al fait.

. Replevine, ou le tenant mist avant le fait del <sup>1</sup> auncestre le feffour l'avowant [par] le quel il estoit deschargé de sute pur la quele l'avowerie est faite, et le quel fait fu fait al feffour le pleyntife. Et furent a issue sur la seisine de la sute avant le passage [en] Bretaynne, et furent estrange a d'amparte al fait.

I.<sup>2</sup>

Johan de Haverache fust attaché a respoudre al Priour de la Trinité hors de Wissepeg' <sup>3</sup> de ces avers atort pris etc.

*Ingham.* Johan avowa la prise etc. qe le Priour tient de luy par homage et fealté et par escuage etc. et par seute a la <sup>4</sup> court etc., des queux <sup>5</sup> il mesme seisi par my la mayn R. predecessour cesty Priour etc.; et pour la seute ariere etc.

*Malb.* Ceaux tenemenz furent en ascun temps en la seisine un Brian de Ingham, qi enfeffa un Andreu, qi estat nous avoms de tenementis predictis a tenir de luy per certa servicia saunt seute faire; dount de Andreu desc[endi] etc. a Thomas com a fitz; le quel Thomas enfeffa un Aleyn etc.; le quel Aleyn enfeffa un S. nostre predecessour etc. (Et ostendit cartam predicti Briani.) Descendi <sup>6</sup> le droit des services a Johan com a fitz etc.; le quel Johan graunta ces services a Symond, piere Johan q'ore avowe etc. Et <sup>7</sup> desicome vous estes estrange purchasour de la seignourye, et vous ne poet moustrer qe vostre feffour fust seisi de la seute, et nous avoms mys avant le fait Brian, qi estat etc., <sup>8</sup> qe testmoigne les tenemenz etc. estre deschargez de seute, demaundoms jugement si pur seute pusset sur nous avowerie faire.

*Ing.* Jeo su <sup>9</sup> tot estrange au fait etc.; le quel fait ne defet pas ma seisine, et jeo ai dit qe nous esteioms <sup>10</sup> seisi etc. par my la mayn vostre predecessour. Par quei seoms a un de la seisine etc.

*Hervi.* Mesqe son predecessour eust chargé son tenement de seute, son successeur serroyt bien <sup>11</sup> r[eeu] a descharger; q'il n'est mye de predecessour a successeur come de auncestre a heire. Coment

<sup>1</sup> al *D.*    <sup>2</sup> Text from *A*: compared with *D*, *T*. Headnotes from *A* and *D*.  
<sup>3</sup> Bisshopsgate *T*; *sim.* *D*.    <sup>4</sup> sa *D*, *T*.    <sup>5</sup> services *D*.    <sup>6</sup> De Brian descend  
*D*, *T*.    <sup>7</sup> *Om.* Et *A*, *D*, *T*.    <sup>8</sup> estrange purchasour et vous etc. *D*.    <sup>9</sup> suy *T*.  
<sup>10</sup> esteimes *T*.    <sup>11</sup> bon *A*; bien *T*.

20. BISHOPSGATE (PRIOR OF) *v.* HABENHACHE.<sup>1</sup>

Avowry for suit of court. *Qu.* whether the assign of a feoffee can, against the assign of a feoffor, rely on a charter of feoffment reserving no suit, if the seisin of the suit is confessed. *Qu.* whether between the assigns of feoffor and feoffee the rule laid down by Stat. Marl. c. 9 can be enforced in an action of replevin. If a lord obtains seisin of an undue suit from a prior, this can only burden the house during that prior's time.

## I.

John of [Habenhache] was attached to answer the Prior of the Trinity outside [Bishopsgate] for his beasts wrongfully taken.

*Ingham.* John avows the taking etc., for the Prior holds of him by homage and fealty and by escuage etc. and by suit to [his] court etc.; of which [services] he himself<sup>2</sup> was seised by the hand of R., predecessor of this Prior etc. And for the suit arrear he avows etc.

*Malberthorpe.* These tenements were at one time in the seisin of one Brian of Ingham, who enfeoffed Andrew, whose estate we have in the said tenements, to hold of him by certain services without doing suit. From Andrew [the right] descended to Thomas as son. Thomas enfeoffed one Alan, who enfeoffed one S. our predecessor etc. (He produced Brian's charter.) The right of the services descended to John as son etc. John granted the services to Simon, father of John the avowant. We pray judgment whether you can avow upon us for suit, since you are a strange purchaser of the seignory, and you cannot show that your feoffor was seised of the suit, and we have produced the deed of Brian, whose estate [you have], which proves that the tenements are discharged of suit.

*Ingham.* I am an utter stranger to the deed etc.; and it cannot defeat my seisin; and I have said that we were seised etc. by the hand of your predecessor. So let us agree about the seisin etc.

STANTON, J. Albeit his predecessor had charged the tenement with suit, [the] successor would be received to discharge it. From predecessor to successor is not like from ancestor to heir. Therefore,

<sup>1</sup> This case is Fitz. *Avowre*, 204.

<sup>2</sup> But see our note from the record.

donqe qe vous avet esté seisi etc., ceo est encountre comune droit, eo<sup>1</sup> qe par my le fait la seute est esteynt; et *per consequens* par my la seisine de soun predecessour qe<sup>2</sup> ne poet charger etc. ne poet avower.

*Ingh.* Si vous devet estre eydé ceo covient ou par comune lay ou par estatut; par statut<sup>3</sup> nient qar etc. chartre, par quei nous sumes a la comune lay, ou me<sup>4</sup> peusse avower de ma seisine demene ou de moun auncestre pus<sup>5</sup> la lymitacioun, la quele seisine nous avoms<sup>6</sup> lyé etc. *ut supra*. Jugement si vous ne devetz a tiel seisine respoudre.

*Toud.* Jeo graunt bien qe nous seoms a la comune ley. Mez depus qe nous avoms mys avaunt une chartre par la quele nostre tenaunce deschargé de la seute etc., et vous estes purchasour de la seignourye et ne devez estre de meillour condicioun qe vostre feffour n'estoit; mez vostre feffour ne purra charger nostre tenaunce encountre le fait etc.; par quei etc.

*Scrop.*<sup>7</sup> Symonde nostre<sup>8</sup> piere et Johan Dengh',<sup>9</sup> qi les services a mesme celuy Symounde etc. et Brian Dengh',<sup>10</sup> piere Johan etc., seisi de la seute par my la mayn R. vostre predecessour avaunt le passage le Roi H[enri] en Brit[aigne]. Prest etc.

Et alii econtra. Ideo ad patriam.

## II.<sup>11</sup>

Le Priour de la Trinité de Bishopesgate<sup>12</sup> se pleyne qe Jon de Haverynges a tort prist ces avers.

*Ing.* avowa par la reson q'il tynt etc. par homage et fealté et escuage, par les services de deux sous et seute etc.; des quex services son piere etc. fut seisi par my la mayn A. predecessour etc.; et pur ceo qe la seute etc. deus anz<sup>13</sup> avaunt etc.,<sup>14</sup> si avowe il etc.

*Malm.* Pur seute ne poet avowerie fere, qar ceux tenemenz furent en ascon temps en la service<sup>15</sup> Viel d'Engaine, qe de ceux enfeffa Alizandre,<sup>16</sup> a tenir de ly par homage, escuage et par les services de ij. sous par an pur toux services et par ceste chartre; le quel Alisandre enfeffa un Andreu a tenir de chef seignourage etc.; le quel Andreu enfeffa le predecessour le Priour a tenir de chef seignourage etc. De Viel descendi le droit des services a Jon com a fitz, qe ceux services graunta a S. piere Jon de Haveringes. Et demaunda jugement, de

<sup>1</sup> *Om.* eo T; pro eo D.    <sup>2</sup> qi D.    <sup>3</sup> *Om.* par statut A; *ins.* D, T.    <sup>4</sup> *Sic* A, D, T.    <sup>5</sup> par T.    <sup>6</sup> avioms D.    <sup>7</sup> *Migg.* D, T.    <sup>8</sup> vostre T.    <sup>9</sup> de Ing' T.    <sup>10</sup> de Ing' T.    <sup>11</sup> Text from R: compared with M.    <sup>12</sup> Sempyng' M.    <sup>13</sup> sute de un an M.    <sup>14</sup> *Ins.* et R.    <sup>15</sup> seisine M.    <sup>16</sup> Aleyn M.



even if you have been seised, this is against common right, for by the deed the suit was extinguished; and consequently you cannot avow upon the seisin [by the hand] of his predecessor who could not charge etc.

*Ingham.* If you are to be helped, that must be either by common law or by Statute.<sup>1</sup> But not by Statute, for etc.<sup>2</sup> Therefore we are at common law, where I can avow on my own seisin or that of my ancestor since the limitation [of the novel disseisin];<sup>3</sup> and such a seisin we have laid, *ut supra*. Judgment, whether you ought not to answer to such a seisin.

*Toudeby.* I freely grant that we are at common law. But we have produced a charter whereby our tenancy is discharged of the suit etc.; and you are a purchaser of the seignory and ought to be in no better position than your feoffor; and he could not have charged our tenement against the deed etc.; therefore etc.

*Scrope.*<sup>4</sup> Simon our father and John [of Ingham], who [granted] these services to Simon etc. and Brian [of Ingham] father of John etc., were seised of the suit by the hand of R. your predecessor before the voyage of King Henry into Brittany:<sup>5</sup> ready etc.

Issue joined. So to the country.

## II.

The Prior of the Trinity of Bishopsgate complains that John of Havering wrongfully took his beasts.

*Ingham* avowed for the reason that [the Prior] holds etc. by homage, fealty and escuage, and by the services of two shillings and suit etc.; of which services [the avowant's] father was seised by the hand of A. predecessor etc. And for the suit arrear for two years before [the day of the taking] he avows etc.

*Malberthorpe.* For suit you cannot avow, for these tenements were at one time in the [seisin] of Viel d'Enghien, who thereof enfeoffed Alexander, to hold of him by homage, escuage, and the services of two shillings a year, for all services, by this charter. And Alexander enfeoffed one Andrew, to hold of the chief lords etc. And Andrew enfeoffed the predecessor of the Prior, to hold of the chief lords etc. From Viel the right of the services descended to John as son; and he granted these services to S[imon] father of John of Havering. [We] pray judgment whether you can avow for suit,

<sup>1</sup> Stat. Marl. c. 9.

<sup>2</sup> This sentence is left imperfect. Perhaps we should read 'for this is not your charter.'

<sup>3</sup> Stat. West. II. c. 2.

<sup>4</sup> Or Migeley.

<sup>5</sup> Stat. Marl. c. 9.

l'oure qe J. de H. rien n'ad si noun com heir S., a qy J. fitz et heir Viel graunta etc., qe rien a ly ne a ces heirs retynt mès qe homage etc. et <sup>1</sup> solum la pourporte de ceste chartre, si pur sewte etc.

*Ingham.* Seoms donqe a un qe nostre piere fut seisi de seute. Et vous ne poet point estre eydé par statut, qe le fet qe vous uset n'est pas vostre chartre ne de vos auncestres ne nul qe assigne vous estes.

*Hervi.*<sup>2</sup> Eux se delient en le droit; et vous ne le poet charger par la seisine un predecessour qe fet ne charge mès pur son <sup>3</sup> temps; et il vous dient qe le feffour vostre piere n'avoit pas cele seute. Coment donqe la <sup>4</sup> grauntereit <sup>5</sup> il ceo q'il n'avoit pas?

*Ing.* Nostre piere seisi de seute de Andreu, qe enfeffa le predecessour le Priour: prest etc.

*Malm.* De ceo qe? <sup>6</sup>

*Ing.* De ceo piert il qe le Priour <sup>7</sup> resceut le tenement chargé; et si chargé resceut, chargé serra.

*Toud.* N'est ceo un service qe vous demaundet? Fetes vostre title bon de J. et de Viel son piere, par qy vous clamet estat.

*Ing.* Nostre title est bone de la seisine nostre auncestre.

*Hervi.*<sup>8</sup> Sount vos avers delivers? <sup>9</sup>

*Malm.* Sire, oil.

*Hervi.* Si autre chose ne diez, vous avendrez tarde<sup>10</sup> a vos services (*non tamen pro iudicio*).

*Migg.* Nos auncestres seisi avaunt le primer passage le Roy H[enri] en B[retagne]: prest etc.

Et alii eontra.

### III.<sup>11</sup>

Le Priour del Hospital Nostre Dame hors de Bisschopisgate se pleint de un Thomas de Haveringges e dit qe atort prist ces avers etc.

*Hengham* avowa la prise etc., par la r[eson] q'il tient de lui un mies e ij. bovez de terre ove les appurtenances en N. par homage, feauté e suite a sa court de N. de iij. semeines en iij. semeines, e par les services de ij. souz al escu qaunt l'escu curt a xl. souz etc.; des queux services il fu seisi par mi la main un G. jadis Priour etc. predecessour cesti Priour, com par mi etc.

<sup>1</sup> *Om.* et *M.*      <sup>2</sup> *Stant. M.*      <sup>3</sup> *lour M.*      <sup>4</sup> *Om. la M.*      <sup>5</sup> *graunta M.*  
<sup>6</sup> *Qei de ceo. M.*      <sup>7</sup> *Depus qe lour Priour M.*      <sup>8</sup> *Staunt. M, and so below.*  
<sup>9</sup> *deliverez M.*      <sup>10</sup> *tout M.*      <sup>11</sup> *Text from Y (f. 173).*

since John of Havering has nothing but as heir of S[imon], to whom John son of Viel granted etc., who retained nothing for himself and his heirs but homage etc. according to the purport of this charter.

*Ingham.* Then let us agree that our father was seised of the suit. And you cannot be aided by the Statute,<sup>1</sup> for the deed that you use is not your charter nor that of your ancestors nor of anyone whose assign you are.

STANTON, J. They discharge themselves in 'the right'; and you cannot charge them by the seisin of a predecessor, whose deed only charges for his time. And they tell you that the feoffor of your father had not this suit. How then could he grant what he had not?

*Ingham.* Our father was seised of the suit of Andrew, who enfeofed the predecessor of the Prior: ready etc.

*Malberthorpe.* What of that?

*Ingham.* From that it appears that the Prior received the tenement charged; and, if charged he received it, charged it will be.

*Toudeby.* Is not what you demand a service? Make your title good from John and Viel, his father, through whom you claim estate.

*Ingham.* Our title is good from the seisin of our ancestor.

STANTON, J. Are your beasts delivered?

*Malberthorpe.*<sup>2</sup> Yes, Sir.

STANTON, J. If you [the avowant] do not say something else, you will be long in getting to your services. (This was not [said] by way of judgment.)<sup>3</sup>

*Miggeley.* Our ancestors were seised before the first voyage of King Henry into Brittany<sup>4</sup>: ready etc.

Issue joined.

### III.

The Prior of the Hospital of Our Lady outside Bishopsgate complains of one Thomas of Havering and says that wrongfully he took his beasts.

*Ingham* avowed the taking etc., for the reason that [the Prior] holds of him a house and two bovates of land with the appurtenances in N. by homage, fealty and suit to his court of N. from three weeks to three weeks, and by the service of two shillings for escuage when it runs at forty shillings [on the fee]; of which services [the avowant] was seised by the hand of G. sometime Prior etc., predecessor of this Prior, as by [the hand of his very tenant].

<sup>1</sup> Stat. Marl. c. 9.    <sup>2</sup> For the plaintiff.    <sup>3</sup> See the next report, which seems to say that no pressure was put upon the avowant.    <sup>4</sup> Stat. Marl. c. 9.

*Malm.* Ceux tenemenz furent autrefois en la seisine Veieu d'Angayn, le quel Veieu enfeffa Alexandre de Wottone a tenir de lui meismes par les serviz avant diz estre la suite e par ceste chartre. (E mist a la curt etc.) Le quel Alexandre feffa Alein de Hormington a tenir des chiefs seignurages deschargé de la suite. Le quel Alein enfeffa un G. predecessour cestui Priour deschargé de cele suite. (E mist avant les chartres.) Jugement si encontre le feffement qe Veieu fist a Alexandre sanz suite e Alexandre a Alein sanz etc. e Alein au Priour etc. sanz etc. si vous encountre celes chartres puissez avowerie fere.

*Heng.* Qei r[esponez] vous a nostre seisine, qe nous avoms esté seisi par mi la main vostre predecessour etc., qar a la chartre Veieu vous estes tut estrange? E le statut vous ne sert mie, car le statut dit 'contra formam carte sue,' a quele chartre vous estes tut estrange.

*Hervi.* Seisine de predecessour ne charge mie la meson mès pur son temps demeine. Par qei dites autre chose.

*Hengham.* Nous dioms qe Johan le fiz Veieu, qe fu seisi de ces services e de la suite par mi la main Alexandre e par mi etc. Alein e par mi la main le Priour predecessour, le quel J[ohan] le fiz Veieu seigneur granta la seignurie e les services a Andreu Haveringes pere cestui Thomas; par queu grant Andreu fut seisi par mi la main G. predecessour etc. e par mi la main cestui Priour, com par mi la main etc.

*Malm.* Vous estes estrange purchasour e av[oir] benefice par mi la chartre Veieu e ces heirs a ceo ne poez vous estre resceu, qar cele chartre fut fete pus le temps limité.

Et postea sine cohercione curie *Mugg.* dist qe Veieu d'Angayn fut seisi de ceste suite par mi la main Alexandre, e Johan sun fiz par my la main Alein de mesme la suite, issi qe ceux tenemenz ont esté chargez devant le passage le Roi H[enri] en Bretagne; et prest del averer.

Et alii contrarium.

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 199, Essex.

John of Habenhache of Haverynges and Richard Jonesreve of Habenhache de Haverynges were summoned to answer the Prior of the New Hospital of Blessed Mary outside Bysshopesgate of a plea wherefore they took the beasts of the Prior and unlawfully detained them against gage and pledges, etc. And thereupon the Prior, by Thomas Palmere his attorney, complains that



*Malberthorpe.* These tenements were sometime in the seisin of Viel d'Enghien; and he enfeoffed Alexander of Wotton, to hold of him by the aforesaid services, except the suit, by this charter. (He showed [the charter] to the Court.) And Alexander enfeoffed Alan of Hormington, to hold of the chief lords, discharged of the suit. And Alan enfeoffed one G., predecessor of this Prior, discharged of this suit. (He showed the charters.) Judgment, whether you can avow against these charters, [to wit,] against the feoffments which Viel made to Alexander without [reservation of] suit, and Alexander to Alan without etc., and Alan to the Prior without etc.

*Ingham.* What say you to our seisin? We were seised by the hand of your predecessor etc. [And] to Viel's charter you are an utter stranger. The Statute<sup>1</sup> does not serve you, for the Statute says 'against the form of *his* charter,' and to this charter you are an utter stranger.

STANTON, J. Seisin [by the hand] of a predecessor will charge the house only for his time. So say something else.

*Ingham.* We say that John, son of Viel, was seised of these services and of the suit by the hand of Alexander and of Alan and of the Prior's predecessor. And John son of Viel, the lord, granted the seignory and services to Andrew [of] Havering, father of this Thomas. On that grant Andrew was seised by the hand of G. predecessor etc. and by the hand of this same Prior, as by the hand [of his very tenants].

*Malberthorpe.* You are a purchasing stranger; and you cannot be allowed to take benefit by the charter of Viel and his heirs, for that charter was made since the time limited.<sup>2</sup>

And afterwards, without pressure from the Court, *Miggeley* said that Viel d'Enghien was seised of this suit by the hand of Alexander, and John [Viel's] son by the hand of Alan of the same suit, so that these tenements were charged before the voyage of King Henry into Brittany<sup>3</sup>: ready to aver.

Issue joined.

#### Note from the Record (*continued*).

on [Jan. 5, 1310] the vigil of the Epiphany A.R. 3, in the vill of Upmenstre<sup>4</sup> in the place called Woctoneslande, they took a cart (*carrum*) and two steers (*boviculos*) of his and impounded and unlawfully detained them against gage etc., until etc.: damages, a hundred shillings. And thereof he produces suit.

(*Note continued on next page.*)

<sup>1</sup> Stat. Marl. c. 9.      <sup>2</sup> This bit of argument seems misplaced.      <sup>3</sup> The day in 1230 fixed by Stat. Marl. c. 9.      <sup>4</sup> Mod. Upminster.

Note from the Record (*continued*).

And John and Richard, by Adam of Brom their attorney, come and defend tort and force when etc. And John answers for himself and Richard,<sup>1</sup> for he says that the Prior holds of him a messuage, thirty acres of land, one acre of meadow, and eight acres of heath with the appurtenances in the vill of Upmenestre by homage and fealty and the twentieth part of the fee of one knight, to wit, two shillings to the King's scutage of forty shillings, when it shall happen, and by the service of two shillings and six pence a year and of doing suit to John's court at Upmenestre from three weeks to three weeks; and of these services one Simon of Habenhache, father of John, whose heir he is, was seised by the hand of one Robert of Cerne, sometime Prior of the said Hospital, as by the hand of his very tenant. And because the suit was arrear to him for two and a half years before the day of the taking, he took the beasts in the said place, which is parcel of the said tenements, within his fee, as well he might etc.

And the Prior says that John cannot avow the taking lawful on the seisin of Simon by the hand of Robert, predecessor etc.; for he says that the tenements were aforetime in the seisin of one Viel Engayne, who in the time of Henry [III.] gave and granted and by his charter confirmed to one Alexander, son of Robert of Wotton, these tenements, to hold to Alexander and his heirs etc. of Viel and his heirs, rendering thence yearly to him and his heirs two shillings and six pence for all service, customs and exaction and for all things thence pertaining to him and his heirs, saving the King's forinsec service so much as pertains to that amount of tenements, and he obliges (*obligat*) himself and his heirs to warrant the tenements etc. to Alexander for his homage and service and to his heirs and assigns against all men and women by the service aforesaid etc. And he proffers a charter under the name of Viel, made to Alexander, which witnesses this. And he says that Alexander enfeoffed one Andrew of Horningdone of these

21. RYDE *v.* TREGOZ.

Replevine, ou il avowa pur releff par seisine de escuage; ou l'autre voleit avoir deschargé la tenaunce par fait d'auncestre; et l'autre receu d'averer sa seisine de escuage pus la limitacioun etc.

I.<sup>2</sup>

Un Johan de B. fust attaché a respoundre a un Henri de Tregod de plee pur quei il avoit pris cez avers etc.

Scrop avowa etc. par la resoun qe mesme celui H. tient de luy etc. un mies etc. et xl. acres de terre etc. par homage et fealté etc. et

<sup>1</sup> The initial formula of an avowry seems to be omitted. compared with *D*, *T*. Headnote from *A*.

<sup>2</sup> Text from *A*:

Note from the Record (*continued*).

tenements, to hold of the chief lords etc. by the services thence due etc.; and that Andrew enfeofed a predecessor of the Prior of these tenements, to hold to him and his successors for ever of the chief lords by the services thence due. And he says that after Viel's death the right of the said services descended to one John Engayne as his son and heir; and that John Engayne granted them to Simon, father of [the avowant]; and thereupon he prays judgment whether [the avowant], son and heir of Simon, who was a strange purchaser, can in this case avow the taking lawful for suit or for any service other than is contained in the charter of Viel, chief lord etc.

And [the avowant] says that, no matter what charter the Prior may here proffer under the name of Viel, to whom as well the Prior as<sup>1</sup> [the avowant] are altogether strangers etc., the Prior cannot discharge himself or his said tenements in this behalf from the suit; for in the statute of Henry [III.] published (*edito*) at Merleberge is contained 'de sectis siquidem faciendis etc. nullus qui per cartam feoffatus est distringatur ad sectam faciendam ad curiam domini sui nisi per formam carte sue specialiter teneatur ad sectam illam faciendam, hiis autem exceptis quorum antecessores vel ipsimet huiusmodi sectam facere consueverunt ante primam transfretacionem predicti domini Henrici Regis in Britanniam etc.'<sup>2</sup>; and he says that Viel was seised of the suit for the tenements by the hand of Alexander son of Robert of Wottone, his very tenant etc., before the voyage of King Henry into Brittany; and this he is ready to aver etc.

And the Prior says that Viel was not seised of the suit by the hand of Alexander for the tenements before the said voyage etc. as [the avowant] says; and he prays that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded for the octave of St. Hilary.

21. RYDE *v.* TREGOZ.<sup>3</sup>

Avowry for relief alleging seisin of a proportionate scutage ever since the time limited for an avowry by Stat. Westm. I. c. 39 and Stat. Westm. II. c. 2. To this a deed showing that less scutage was due would be no answer even between privies. Stat. Marl. c. 9 does not apply, for relief is not a service.

## I.

One John of B. was attached to answer one Henry de Tregod of a plea wherefore he took his beasts etc.

*Scrope* avowed etc. for the reason that this Henry holds of him etc. a messuage etc. and forty acres of land etc. by homage and fealty

<sup>1</sup> The record here gives *quod* for *quam*.

<sup>2</sup> Stat. Marl. c. 9.

<sup>3</sup> This case is Fitz. *Avowre*, 200.

par les services de la uyttime<sup>1</sup> partie d'un fee<sup>2</sup> chyvaler ; des queux services il mesme seisi par my la mayn Richard pierre Henri etc. ; et pur ceo qe xij. souz et vj. deniers si furent ariere de releef, qe due ly est par my la mort Richard pierre H., etc.

*Denom.* Ceo qe vous appelez miés et xl. acres de terre, nous le tenoms pur un mies et une vergé de terre par homage et feaulté et par les services de la quarauntisme partye d'un fee de chyvaler, et par le fait un R. vostre auncestre, qi de ceo enfeffa un Laurence etc. nostre<sup>3</sup> auncestre a tenir in forma predicta pur toux services. (Et mist avaunt le fait etc.) Et qaunt al releef sc. ij. souz vj. deniers afferent a taunt de quantité de tenaunce etc., nous vous dioms qe pleinement païé : prest etc. Et demaundoms jugement si pur plus de releef qe affert a la quarauntisme partie de fee de chyvaler pusset encountre le fait vostre auncestre avowrie faire.

*Scrop.* Jeo n'ay avowé pur service ariere, eynz pur choce q'est incident de service, et ay lié ma seisine d'escuage par my la mayn vostre pierre, qe doune cause d'avowerie. Par quei seoms a un de la seisine come j'ay dit.

*Denom.* Vous pledet a<sup>4</sup> la possessioun, et jeo vous conu<sup>5</sup> la tenaunce com<sup>6</sup> en la manere com jëo vous ai dit par un fait, par quel fait jeo lye ma tenaunce a descharge, q'est en le droit. Par quei seoms a un si ceo soit le fait vostre auncestre ou noun.

*Scrop.* Si vous devez estre deschargé etc. ceo covent par estatut. Mes par estatute mye, qe estatut veot quod nullus distringatur contur<sup>7</sup> la forme de soun feffement pur seute ne pur service.<sup>8</sup> Mez ore est ceo qe nous avowoms ne pur seute ne pur service ; einz est un incident des services. Par quei etc.

*Denom.* N'est pas d'escuage come des services annuels qe sount payés de an ;<sup>9</sup> qe poet estre par cas qe par continuaunce de seisine vous purriez estre eydé ;<sup>10</sup> set secus est in isto casu d'escuage, ou par cas vous n'averetz pas relef fors une foitz ou ij. foitz en xl. aunz. Par quei mesqe vous eiet esté seisi etc. par duresce ou par acrochement, ceo vous ne dorra mye tittle en chargaunt sa tenaunce encountre le fait etc.

*Scrop.* Jeo plede a ceo qe me doune garraunt<sup>11</sup> a destreindre, videlicet ceo est la seisine d'escuage. Et depus qe jeo<sup>12</sup> seisi d'escuage, q'est le principal, jugement si pur l'accessorie ne peusse avower.

<sup>1</sup> xx<sup>me</sup> T ; vtisme D. <sup>2</sup> Ins. de D. <sup>3</sup> vostre A ; om. nostre D. <sup>4</sup> en D, T. <sup>5</sup> et vous conisiez T. <sup>6</sup> Om. com T. <sup>7</sup> Interlined A ; encountre D, T. <sup>8</sup> Om. to after next service D. <sup>9</sup> dan en an D, T. <sup>10</sup> prierez estre eide D with estre erased. <sup>11</sup> garauntie D. <sup>12</sup> Ins. suy T ; seu D.



etc. and by the services of the eighth part of a knight's fee ; of which services he himself was seised by the hand of Richard, father of Henry etc. And because twelve shillings and sixpence for a relief, which is due to him on the death of Richard, are arrear, [he avows] etc.

*Denom.* What you call a messuage and forty acres of land we hold as a messuage and a virgate of land by homage and fealty and by the services of the fortieth part of a knight's fee, and [this] by the deed of one R., your ancestor, who thereof enfeofed one Lawrence etc. our ancestor, to hold in form aforesaid for all service. (He produced the deed etc.) And as to the relief of two shillings and sixpence proper to a tenancy of that quantity, we tell you that he is fully paid : ready etc. And we pray judgment whether against the deed of your ancestor you can avow for more relief than belongs to the fortieth part of a knight's fee.

*Scope.* I have avowed, not for service arrear, but for a thing that is an incident of service. And I have laid my seisin of scutage by the hand of your father, and this gives cause for an avowry. So let us be at one as to the seisin as I have said.

*Denom.* You plead about the possession ; and I have confessed to you the tenancy in the manner that I told you by a deed, and by that deed I lay my tenancy as discharged ; and this matter lies in ' the right.' So let us agree whether this is the deed of your ancestor or not.

*Scope.* If you are to be discharged etc., that should be by Statute.<sup>1</sup> But it cannot be by Statute, for Statute says that none be distrained against the form of his feoffment for suit or for service. Here, however, we are not avowing for suit or for service, but for an incident of the services. Therefore etc.

*Denom.* Scutage is not like annual services which are paid year by year. It may be that you can be aided<sup>2</sup> by a continuance of seisin [in the case of annual services] ; but it is otherwise in this case of scutage, [and] perchance you will not have relief<sup>3</sup> more than once or twice in forty years. So, albeit you may have been seised by duress or encroachment, that will not give a title so as to charge the tenancy contrary to the deed etc.

*Scope.* I plead of something that gives me warrant to distrain, to wit, the seisin of scutage. And since I am seised of the scutage, which is the principal, [we pray] judgment whether I cannot avow for the accessory.

<sup>1</sup> Stat. Marl. c. 9, which gave the *contra formam feoffamenti*. <sup>2</sup> One book says 'could pray aid' ; but this seems wrong. <sup>3</sup> Perhaps it should be 'scutage.'

*Denom.* La tenaunce q'est en le droit doune garraunt<sup>1</sup> d'avower. Mez jeo plede et ay<sup>2</sup> mys avaunt le fait qe descharge nostre tenaunce et<sup>3</sup> in forma predicta, et vous ne moustrez fors une possessioun etc. Jugement etc.

*Berr.* Respondez a ceo qu'il vous dient.

*Scrop.* Donque dioms qe nostre piere et nostre aiel seisi del escuage de luy et de cez auncestres pus la lymitacioun du bref de novele disseisine.<sup>4</sup> Prest etc.

*Denom.* Donque conisset vous bien le fait.

*Scrop.* Jeo plede de la seisine<sup>5</sup> qe me doune cause d'avowement par l'estatut. Dount si vous deisset qe moi et mez auncestres nyent seisi avaunt la lymitacioun du bref de novele disseisine, et jeo pusse averer ma possessioun continualment pus, vous ne me ousterez mye de ma avowerie. Par quei etc.

*Stant. a Dengh.*<sup>6</sup> Il vous dit qe li et ces auncestres seisi *ut supra* pus la limitacioun du bref etc. Par quei responez a ceo q'il vous dit.

*Denom.* Nyent seisi pus la lymitacioun. Prest etc.

Et alii econtra.

## II.<sup>7</sup>

*Scrop* avowa par la r[eson] q'il tynt de ly un mies iiij.<sup>xx</sup> acres de terre etc. par homage, escuage et les services etc. utyme<sup>8</sup> partie de un fee de chivaler; des quex services etc. par my la mayn son pere etc.; et pur xx. sous de relefe mesme cesti qe se pleynt qe affert pur la tenaunce etc. si avowe etc.

*Ing.*<sup>9</sup> Nous conisoms bien qe nous tenoms un mies etc. Et ceo qe vous appelet iiij.<sup>xx</sup> acres de terre si est demie vergé de terre de qey ne amountereit le relefe forqe a ij. sous, pur ce qe qaunt<sup>10</sup> des vergés sount<sup>11</sup> un fee de un chivaler, et de les ij. sous rien ariere<sup>12</sup>: prest etc.

*Scrop.* Dount sumes a un qe nous sumes seisi de utime<sup>13</sup> partye del fee de un chivaler par my la mayn vostre pere.

*Ingham.*<sup>14</sup> Jeo n'ay pas mester a pleder a cel, qe vous ne dedites pas le fet vostre auncestre, qe prove nostre tenaunce estre forqe de demy<sup>15</sup> vergé de terre. Et voloms averer qe taunt<sup>16</sup> de vergés de terre sount le fee de un chivaler.

<sup>1</sup> garauntie D.    <sup>2</sup> ei D.    <sup>3</sup> Om. et T.    <sup>4</sup> Om. to after next disseisine D.  
<sup>5</sup> al assise A, T.    <sup>6</sup> Hengh. T; adenq' D.    <sup>7</sup> Text from R: compared with M.  
<sup>8</sup> xx<sup>me</sup> M.    <sup>9</sup> Denom. M.    <sup>10</sup> tenaunt M.    <sup>11</sup> Corr. fount.    <sup>12</sup> rien a  
nostre R.    <sup>13</sup> xx<sup>me</sup> M.    <sup>14</sup> Denom. M.    <sup>15</sup> Om. demy M.    <sup>16</sup> tenaunt M.

*Denom.* The tenancy, which is in 'the right,' gives the warrant for an avowry. But I plead and have produced the deed which discharges our tenancy in manner aforesaid, and you only show a possession. Judgment etc.

BEREFORD, C.J. Answer what they tell you.

*Scrope.* Then we say that our father and grandfather were seised of the scutage of him and his ancestors since the limitation of the writ of novel disseisin: ready etc.

*Denom.* Then you freely confess the deed.

*Scrope.* I plead on [the seisin] which by Statute gives me cause for an avowry.<sup>1</sup> So if you said that I and my ancestors were not seised before the limitation of the writ of novel disseisin,<sup>2</sup> and I could aver my continuous possession ever afterwards, you could not oust me from my avowry. Therefore etc.

STANTON, J., to *Ingham*. He tells you that he and his ancestors were seised as above since the limitation of the writ etc. So answer to what he tells you.

*Denom.* Not seised since the limitation: ready etc.

Issue joined.

## II.

*Scrope* avowed for the reason that [the plaintiff] held of him a messuage, four-score acres of land etc. by homage, escuage and the services of the [eighth] part of a knight's fee; of which services [he was seised] by the hand of [the plaintiff's] father; and for twenty shillings of the plaintiff's relief due for the tenancy etc. he avows etc.

*Ingham.*<sup>3</sup> We confess that we hold a messuage etc. And what you call four-score acres of land is a half virgate of land, for which the relief would only amount to two shillings, because so many<sup>4</sup> virgates make a knight's fee; and of the two shillings, nothing is arrear: ready etc.

*Scrope.* Then we are at one that we are seised of the eighth part of a knight's fee by the hand of your father.

*Ingham.* I have no need to plead to that, for you do not deny the deed of your ancestor, which proves the tenancy to be of only a half virgate of land. And we will aver that so many virgates of land make a knight's fee.

<sup>1</sup> Stat. Westm. II. c. 2.

<sup>2</sup> In 1242.

<sup>3</sup> Or *Denom.*

<sup>4</sup> Naming the number.

*Scrop.* Nous avoms avowé pur relef et par la seisine del escuage, de qey nous sumes seisi parmy la mayn vostre pere comme nostre tenaunt comme affert al utime<sup>1</sup> partie de un fee de chivaler, de qey relefe est incident. Et demaundoms jugement de pus qe vous ne dedites pas nostre seisine etc.

*Hervi.* Vous ne parlez mees<sup>2</sup> de vostre seisine d'escuage<sup>3</sup> parmy la mayn son pere, qe n'est pas service aunuele, de qey il covent plus aliger<sup>4</sup> le temps de seisine de plus haut,<sup>5</sup> par quei vous acrust droit des services qe en droit des services aunueles.

*Scrop.* Nos auncestres seisi<sup>6</sup> de ces<sup>7</sup> services pus la limitatioun de bref de novele disseisine : prest etc.

*Ingham.*<sup>8</sup> Uncore ne r[esponez] al fet vostre auncestre.

*Hervi.* Il r[espount] asset. Si vos auncestres se acombrerent et chargerent ou il se pount avoir deschargez, a qy le retterez vous, qe de cel temps<sup>9</sup> de quel title est doné<sup>10</sup> de fere avowerie, s'avowerie est bon.

*Ing.* Pus la lymitation etc. mès des services pur la xx.<sup>11</sup> partie de un fee de chivaler : prest etc.

Et ideo ad xij.

### III.<sup>12</sup>

Un Johan se plaint qe A. prist ces avers etc. scilicet ij. chivaux.

A. avowe la prise bone e droiturele par la reson q'il tient de lui un mees e lx. acres de terre par homage, fealté et par suite a sa court de N. de iij. semeines en iij. semeines et par le ustime part de un service de chivaler, scilicet, qaunt l'escu curt a x.<sup>13</sup> souz, v. souz, e qaunt a plus plus e qaunt a meinz meinz ; des queux services il fut seisi etc. par my la main sun pere etc. Et pur sun homage arere si avowe il la prise del un chival ; e pur xj. souz de relef de la mort H. sun pere si avowe il la prise del autre chival.

*J. Denham.* A cele avowerie ne devez estre resceu, qar la ou vous dîtes qe nous tenoms de vous lx. acres de terre, nous ne tenoms de vous qe un mees e une demi vergée de terre par homage, fealté e suite etc. e par les services de la quarantime partie de un fee de chivaler solom les usages du pais, car en celes parties xx. bovez de terre font un fee de chivaler. E veez cy le fet sun auncestre qe de

<sup>1</sup> xx<sup>me</sup> M.      <sup>2</sup> ne provez mes M.      <sup>3</sup> de son age R ; om. descuage M.  
<sup>4</sup> enlarger M.      <sup>5</sup> Om. de plus haut M.      <sup>6</sup> Nous avoms seisine M.      <sup>7</sup> ceux M.  
<sup>8</sup> Denom. M.      <sup>9</sup> descharg' et de tel temps M.      <sup>10</sup> due R ; done M.      <sup>11</sup> xxx<sup>me</sup> M.  
<sup>12</sup> Text from Y.      <sup>13</sup> Corr. xl.



*Scrope.* We have avowed for a relief and upon a seisin of escuage, whereof we are seised by your father's hand as our tenant, for as much as pertains to the eighth part of a knight's fee; and to this, relief is incident. We pray judgment since you do not deny our seisin etc.

STANTON, J. You speak only of your seisin of escuage by the hand of his father, and that is not an annual service. So, in order that right might accrue to you, you must lay the time of seisin higher up than you would have to do in case of annual services.

*Scrope.* Our ancestors were seised of these services since the limitation of the writ of novel disseisin:<sup>1</sup> ready etc.

*Ingham.* Still you do not answer to your ancestor's deed.

STANTON, J. He answers enough. If your ancestors encumbered and charged [the land] when they might have discharged it, whom will you blame, for his avowry is good if the seisin alleged is since the time of limitation for an avowry?

*Ingham.* Since the limitation etc. [seised] only as for the twentieth part of a knight's fee: ready etc.

So to the twelve.

### III.

One John complains that A. took his beasts etc., to wit, two horses.

A. avows the taking good and lawful, for the reason that he holds of him a messuage and sixty acres of land by homage, fealty, and by suit to his court of N. from three weeks to three weeks, and by the eighth part of the service of one knight, to wit, when scutage runs at [forty] shillings, five shillings, and so in proportion; of which services he was seised etc. by the hand of his father etc. And for his homage arrear, he avows the taking of the one horse; and for [twelve shillings and sixpence] for relief on the death of H. his father, he avows the taking of the other horse.

*J. Denom.* You ought not to be received to this avowry; for, whereas you say that we hold of you sixty acres of land, we only hold of you a messuage and a half virgate of land by homage, fealty and suit, etc. and by the services of a fortieth part of a knight's fee according to the usage of the country, for in those parts twenty<sup>2</sup> bovates of land make a knight's fee. And see here the deed of

<sup>1</sup> A day in 1242.

<sup>2</sup> Perhaps it should be forty, the half-virgate being equivalent to a bovat.

cele terre enfeffa nos auncestres. (E mist avant la chartre de feffement qe ceo tesmoigne.) Et demandoms jugement si encountre le fet sun auncestre pur autres services puisse avowerie fere.

*Scrop.* Conussez nostre seisine et nous pledroms ove vous.

*Denham.* Est ceo le fait vostre auncestre ou ne mie ?

*Scrop.* Nous ne sumes icy en cas de statut ke fet mencion des services, einz sumes en avowant pur relef, qe est un incident des services, scilicet escuage.

*Denham.* Nous tenoms les tenemenz de vous par les services del xl<sup>me</sup> partie de un fee de chivaler, scilicet xij. deners qaunt l'escu curt a xl. souz ; dount afferoit a relef ii. souz e vj. deners ; de quel relef il est pleinement paié, e demandoms jugement ut prius.

*Hervy a Scrop.* Il vous covent afforcer melz vostre avowerie, car il tient de vous un mees e demi vergee de terre par les services *ut prius* e par le fet vostre auncestre, a qei il gist un r[espons].

*Scrop.* Nous e nos auncestres seisi de ces services pus le temps limité par my les meins ses auncestres sanz interrupcion.

*Denham.* Qei r[esponez] en droit de la tenance, qar de la tenance issent les services e nomement escuage, de qei cel relef ist ?

*Denham.* Nent seisi pus le temps etc. sanz interrupcion : prest etc. Et alii contrarium.

*Scrop.* Qei r[esponez] al homage ?

*Denham.* Nous lui tendimes le homage e uncore fesoms : prest del averer.

Et alii contrarium.

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 188d, Sussex.

Henry Tregoz, Richard Wellewone, and Stephen Debbe were summoned to answer Peter le Ryde of Gorynge of a plea wherefore they took Peter's beasts and unlawfully detained them against gage etc. And thereupon Peter by his attorney complains that on [March 23, 1308] Saturday next before the feast of the Annunciation A.R. 1, in the vill of Gorynge,<sup>1</sup> in the place called Westfelde, Henry and the others took two heifers of his and on [April 13, 1308] the vigil of Easter in the same year in the same vill and place took two heifers of his, and on [May 31, 1308] Friday next before the feast of Pentecost in the same year in the same vill and place took four oxen of his, and impounded those beasts and in pound detained them against gage etc. until etc. : damages, ten pounds. And thereof he produces suit.

And Henry, and the others by their attorney, come. And Henry answers for himself and the others ; and he avows the takings good : and lawfully,

<sup>1</sup> Goring near Arundel.

[your] ancestor who enfeoffed our ancestors of this land. (He produced the charter of feoffment which witnessed this.) We pray judgment whether he can avow for other services against the deed of his ancestor.

*Scrope.* Confess our seisin, and we will plead with you.

*Denom.* Your ancestor's deed or not?

*Scrope.* We are not here in the case of the Statute,<sup>1</sup> which makes mention of 'services,' but are avowing for a relief, which is an incident of the services, to wit, of the scutage.

*Denom.* We hold the tenements of you by the services of the fortieth part of a knight's fee, to wit, twelve pence when the scutage runs at forty shillings; so our relief would be two shillings and sixpence; and of this relief he is fully paid. Judgment, as before.

STANTON, J., to *Scrope*. You must enforce your avowry better; for he holds of you a messuage and a half-virgate of land by the service (as before) and by your ancestor's deed, to which an answer is due.

*Scrope.* We and our ancestors were seised of these services by the hand of his ancestors since the time of limitation without interruption.

*Denom.* What do you answer as to the tenancy, for the services—and in particular the scutage from which the relief issues—issue from the tenancy?

*Denom.*<sup>2</sup> Not seised without interruption from the time of limitation: ready etc.

Issue joined.

*Scrope.* What about the homage?

*Denom.* We tendered him the homage and still do so: ready to aver.

Issue joined.

#### Note from the Record (*continued*).

for he says that Peter holds of him a messuage and sixty acres of land with the appurtenances in the vill of Gorynge, whereof the *locus in quo* is part, by homage and fealty and the service of the eighth part of the fee of one knight, to wit, five shillings to the King's scutage of forty shillings, when it occurs, and so in proportion, and also sixty other acres of land with the appurtenances in the same vill, whereof the same *locus in quo* likewise is part, by homage and the other services aforesaid; and of these services Henry was seised by the hands of John le Ryde, father of Peter, whose heir he is. And because twelve shillings and six pence for relief after the death of John le Ryde, father etc., for the said messuage and sixty acres of land

<sup>1</sup> Stat. Marl. c. 9.

<sup>2</sup> We may suppose that Denom, re-

ceiving no answer to his question, speaks again.

Note from the Record (*continued*).

were arrear to Henry on the day of the first taking, etc., he took the two heifers etc.; and also because twelve shillings and six pence for relief after the death of John, father etc., for the other sixty acres were arrear to Henry on the day of the second taking, he took the other two heifers etc.; and because Peter's homage for the said sixty acres of land was likewise arrear to Henry on the day of the last taking, he avows the taking of the four oxen, within his fee etc.

And Peter says that Henry cannot avow the takings lawful in this behalf; for he says that (whereas Henry avows the first taking for a relief etc. by reason of a messuage and sixty acres of land etc., which messuage and land Henry in his avowry says that Peter holds of him by homage and the service of an eighth part of a knight's fee) he holds those tenements of Henry as for (*tanquam pro*) a half virgate of land only, and this by the service of a fortieth part of a knight's fee, because in the said vill twenty virgates of land make a knight's fee etc. Also he says that as to the second taking etc., which Henry likewise avows for relief etc., by reason of other

22. MOUNCY *v.* NARFORD.

Replevine, si jeo su pleint en un counté de prise fait en altre counté jeo serra amercié.

I.<sup>1</sup>

En une prise des avers ou le pleyntif counta d'une prise faite en le counté de Suff[olk], et counta q'il furent achacé en un certeyn lieu en le counté de Norff[olk] etc. a qi vicounte il siwi le *replegiari* et soun *pone*. Et pur ceo qe les brefs furent directtez al vicounte de Norff[olk] de la prise faite en Suff[olk] si fust agardé etc. en la mercy pur sa malveys pleynte. En droit del retourn, attendetz vos juge-menz etc. Istud accidit inter dominam de Mouncy et dominam de Nerreforde.<sup>2</sup>

II.<sup>3</sup>

Nota qe la ou le pleintife dist qe la prise fut en le conté de Suff[olk] e le bref ala a viscount de Norff[olk].

*Hervy a Willuby.* Fut la prise fete en le conté?

*Willuby.*<sup>4</sup> Sire, oil.

*Hervi.*<sup>5</sup> Qe ne eussez vous porté bref qe doné est par statut en le cas?

<sup>1</sup> Text from *A*: compared with *D*, *T*. Headnote from *A*.

<sup>2</sup> Noreforde *D*.

<sup>3</sup> Text from *Y* (f. 173).

<sup>4</sup> *Om.* Willuby *Y*.

<sup>5</sup> *Om.* Hervi *Y*.



Note from the Record (*continued*).

sixty acres of land, he holds the same tenements of Henry as for another half virgate of land only, by a like service of scutage etc., to wit of a fortieth part of a knight's fee etc. And therefore (whereas Henry avows the said two takings for relief belonging to the eighth part of a knight's fee, laying (*ligando*) a seisin by the hands of John, father etc., of scutage for the eighth part of a fee) Henry never was seised of any scutage by the hand of John, father etc., save only scutage for the fortieth part of a knight's fee etc. And of this he puts himself upon the country etc.

And as to the homage for which Henry avows etc., [Peter] says that unlawfully he avows it; for he says that he was always ready to do him the homage and tendered it to him at Goring, to wit, on [April 21, 1308] Sunday next after Easter, A.R. 1, in the presence of [three names], and Henry refused to receive (*admittere*) that homage etc.; and that so it is, he prays may be inquired by the country etc.

Issue is joined, and a *venire facias* for witnesses and jurors is awarded for the octave of St. Hilary.<sup>1</sup>

22. MOUNCY *v.* NARFORD.

Replevin: writ to the wrong sheriff, the beasts having been driven from one county to another.

## I.

In a replevin the plaintiff counted on a taking made in the county of Suffolk, and counted that the beasts were driven to a certain place in the county of Norfolk etc., to the sheriff of which [county] he sued his *replegiari* and his *pone*. And as the writs were directed to the sheriff of Norfolk touching a taking in Suffolk, [the plaintiff] was adjudged to be in mercy for his bad plaint. As to the return, await your judgments etc. This happened between the Lady de Mouncy and the Lady de Nerreforde.

## II.

The plaintiff said that the taking was in the county of Suffolk, and the writ went to the sheriff of Norfolk.

STANTON, J., to *Willoughby*. Was the taking made in the county [of Suffolk]?

*Willoughby*. Yes, sir.

STANTON, J. Why did not you bring the writ which Statute gives you for that case?<sup>2</sup>

<sup>1</sup> Another entry of this case stands on r. 180, but is vacated as erroneous. The differences between the two entries

are small. Neither shows that the issue mentioned the time of limitation.

<sup>2</sup> Stat. Marl. c. 4.

*Hervi.* Si agard la court qe vous ne preignez rien par vostre bref etc. Et qaunt a return avoir, tendez voz jugemens lendemein de la Purificacion etc.

Nota, com jeo crei, qe le jugement sur le return ne fut nent rendu, pur ceo q'il ne avowa mie; ut patet in le *quare impedit*, tut abate il le brefe il n'avera mie bref al evesqe sanz moustrer sun droit etc.

**Note from the Record.**

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 307, Norf.

Petronilla, wife that was of William of Narford, Richard of Thirstone, and Henry Wobode were summoned to answer Alice, wife that was of Ralph of Mouncey, of a plea wherefore they took her beasts and unlawfully detained them against gage and pledges etc. And thereupon Alice, by John of Wathe her attorney, says that on Monday next after the feast of St. Gregory the Martyr<sup>1</sup> in A.R. 2 in the vill of Elgh'<sup>2</sup> in a place called Hallecroft, Petronilla and the others took two horses and four oxen of hers and drove them to Petronilla's pound at Thirstone,<sup>3</sup> and there in pound detained them against gage etc. until etc.: damages, a hundred shillings. And thereof she produces suit etc. (*Note continued on opposite page.*)

**23. BARKING (ABBESS OF) v. LETTLE.**

Replevine, ou el avowa sour un de tenauntz du manier de la seisine soun baroun par assignement le heir. Et agardé bone, qe a ly assigna le manier a tenir en dowere, saunz dire qe le heir fust seisi etc.

**I.<sup>4</sup>**

La dame de Beners fust attachee a respoundre al Abbessse de Berkynge<sup>5</sup> de plee pur quei ele prist cez avers etc.

*Malb.* Nous avowoms etc. par la resoun q'un Roggier de Beners jadiz baroun la dame tient le manier de Berkney,<sup>6</sup> de<sup>7</sup> qi Maude predecessor ceste Abbessse tient taunt dez tenemenz par homage, feaulté,<sup>8</sup> par les services etc. et par escuage etc.;<sup>9</sup> dez queux services Roggier seisi par my la mayn l'avauntedit Maude com etc., issint qe après la mort Roggier, Edmund entra com fitz et heir et assigna a la dame etc. le manier<sup>10</sup> en dowere etc., et pur les vij.<sup>11</sup> souz ariere etc. si avowoms.

<sup>1</sup> *Grigorii Martiris.* Perhaps *Georgii* was meant. <sup>2</sup> Apparently Ellough, near Beccles. <sup>3</sup> Mod. Tharston. <sup>4</sup> Text from *A*: compared with *D*, *T*, *P*. Headnote from *A*. <sup>5</sup> Berewyke *P*. <sup>6</sup> Berkenei *D*, *T*; Berner *P*. <sup>7</sup> deinz *P*. <sup>8</sup> *Ins.* et *D*. <sup>9</sup> fealte et par *vj.* s. etc. *P*. <sup>10</sup> *Rep.* le manier *A*. <sup>11</sup> *vj.* *D*, *T*.

STANTON, J. The Court awards that you take nothing by your writ etc. As to having a return [of the beasts], await your judgments on the morrow of the Purification.

Note. In my belief judgment as to a return was not given because he did not avow. Compare the case of *quare impedit*; albeit [the impedient] abates the writ, he will not have a writ to the bishop unless he shows his right.

**Note from the Record** (*continued*).

And Petronilla and the others, by William Tebaud their attorney, come and defend tort and force when etc.; and they say that they ought not to answer to this writ, for they say that the said vill of Elgh' is in the county of Suffolk, and the original writ and the *pone* are directed to the sheriff of Norfolk; and thereof they pray judgment etc.

And Alice cannot deny this. Therefore it is awarded that Petronilla and the others go thence without day etc., and that Alice take nothing by this writ, but be in mercy for a false claim. And as to a judgment upon (*super*) the return of the said beasts, a day is given them here on the morrow of the Purification etc.

23. BARKING (ABBESS OF) *v.* LETTLE.<sup>1</sup>

A doweress to whom a manor has been assigned can avow upon a tenant of the manor, laying seisin of the services in her husband and not alleging an attornment.

**I.**<sup>1</sup>

The Lady of Beners was attached to answer the Abbess of Barking of a plea why she took her beasts etc.

*Malberthorpe.* We avow etc. for the reason that one Roger de Beners, sometime husband of this lady, held the manor of Berkeney, and Maud, predecessor of this Abbess, held of [it] such and such tenements by homage, fealty, and the services [of seven shillings a year], and by scutage etc.; and of these services Roger was seised by the hand of Maud, as etc., so that on his death Edmund entered as son and heir and assigned the manor to the lady in dower. And for the seven shillings arrear etc. we avow.

<sup>1</sup> This case is Fitz. *Avowre*, 205.

*Caunt.* Bien avet entendu coment la dame avowe etc.; q'est estraunge par la resoun qe le manier a quei nos services sount regardauntz luy fust assigné en dowere etc. Mez ore n'ount il mye dit qe les services l'Abbesse luy fust<sup>1</sup> assigné, ne qe l'Abbesse<sup>2</sup> luy fust attorné. Jugement si a tiel avowerie devez estre r[espound]u.<sup>3</sup>

*Malm.* Conisset qe vous estes tenaunt du manier etc. et q'est a nous assigné,<sup>4</sup> et demorroms en jugement.

*Caunt.* Si le manier fust graunté par fyn levé en ceste court, si celuy a q'i le graunt se fist vousist avoir attournement des tenauntz du manier, il convendreit<sup>5</sup> epecifier les services des tenauntz, qe autrement n'avereit il mye le *per que servicia* hors de la note.<sup>6</sup> Auxi de cea. Del houre qe vous n'avet dit en vostre avowerie qe nos services vous furent assignez ne qe nous attornames a vous, jugement etc.

*Malb.* Non est simile; q'avaunt qe tenaunt deive estre departie a<sup>7</sup> soun seignour par soun graunt, il covient epecefier<sup>8</sup> soun service etc. Mez vous n'estes<sup>9</sup> departi, qar unqore demouretz vous le tenaunt Edmund du<sup>10</sup> droit, issint qe l'estat la dame<sup>11</sup> et l'estat Edmund ne sount fors un estat com le piere Edmund out et le baroun la dame. Et del houre qe vous ne poet dedire qe vos services ne sount regardauntz al manier etc., demaundoms jugement.

*Caunt.* Unqore demaundoms jugement del hour qe la dame est estraunge et cleyme par l'assignement Edmund, et n'ad mye dit qe Edmund fust seisi de nos services; jugement.

*Malb.* Nous preymes nostre tittle de Roggier nostre baroun; et q'i qe nous eust assigné dowere, nous ne prendroms nostre tittle de luy. Nient plus de ceste part.

{*Malm.*<sup>12</sup> Nous pernomms nostre tittle de la seisine R. nostre baroun et nent de la seisine le heir, qe si le gardeyn ust entré après la mort l'auncestre<sup>13</sup> et ust assigné a nous dowere, nous ne prendroms<sup>14</sup> point nostre tittle del gardeyn.<sup>15</sup> Nent pluis de ceste part.}

Et l'avowerie fust agardé bon. Et postea dixit: Soun baroun nyent seisi; prest etc.

Et alii econtra.

Et<sup>16</sup> sic nota avowerie fait par celuy qe fust estraunge du saunke ou ele ne fust my seisi etc.

<sup>1</sup> fut *D, T*; furent *P*.    <sup>2</sup> *Ins.* a *D, T*.    <sup>3</sup> resceu *T*.    <sup>4</sup> *Ins.* etc. *T*.  
<sup>5</sup> covendra *D*.    <sup>6</sup> End of speech *P*. *Om.* two next speeches *P*.    <sup>7</sup> de *D, T*.  
<sup>8</sup> especefier *T*; especifier *D*.    <sup>9</sup> *Ins.* pas *D, T*.    <sup>10</sup> de *D*.    <sup>11</sup> *Om.* to after next dame *T*.  
<sup>12</sup> Substitute for last speech *P, D*.    <sup>13</sup> morte Rogier nostre baroun *D*.    <sup>14</sup> prendrioms *D*.    <sup>15</sup> tittle de ly *D*.    <sup>16</sup> *Om.* this note *P*.



*Cambridge.* You have heard how the lady avows; and she is a stranger, because the manor to which our services are regardant was assigned to her in dower etc.; and they have not said that the Abbess's services were assigned to her, nor that the Abbess was attorned to her. Judgment, whether you ought to be answered to this avowry.

*Malberthorpe.* Confess that you are a tenant of the manor which is assigned to us, and then let us abide judgment.

*Cambridge.* If the manor were granted by a fine levied in this court, and the grantee wished to have an attornment of the tenants of the manor, he would have to specify the services of the tenants, for otherwise he would not have the *per quae servicia* out of the note [of the fine.] So in this case. Judgment, since you have not said in your avowry that our services were assigned to you or that we attorned.

*Malberthorpe.* Not a like case. Before a tenant is separated from his lord by grant, his services must be specified. But you are not separated, for you still remain tenant of Edmund in right, so that the lady's estate and Edmund's are but one estate, being that which her husband and Edmund's father had. Judgment, since you cannot deny that your services are regardant to the manor etc.

*Cambridge.* Still we pray judgment, since the lady is a stranger and claims by Edmund's assignment, and she has not said that Edmund was seised of our services.

*Malberthorpe.* We took our title from Roger our husband. And no matter who assigned our dower, we should not take our title from him. No more [shall we do the like] in this case.

{ *Malberthorpe.*<sup>1</sup> We take our title in the seisin of R. our husband and not in the seisin of the heir; for if a guardian had entered after the ancestor's death<sup>2</sup> and had assigned dower to us, we should not take our title from the guardian. No more in this case.

The avowry was adjudged good. Then [the plaintiff] said: Her husband was never seised; ready etc.

Issue joined.

So note that an avowry was made by a stranger in blood who never was seised etc.

<sup>1</sup> An alternative for the last speech.

<sup>2</sup> Or 'after the death of Roger our husband.'

II.<sup>1</sup>

Un baillif conust une prise en noun une femme tenaunte en dower, pur ceo q'ele tynt en dower un manoir a qy les services le pleyntife furent regardanz.<sup>2</sup> Et dit qe le baroun fut seisi du manoir et des services par my la mayn le pleyntife, et q'ele tent cel manoir del dowement son baroun et del assignement son heir. Quele conisaunce fut chalaungé,<sup>3</sup> pur ceo q'il ne dit qe les services furent assignez. Et <sup>4</sup> fut dit par *Scrop* qe service et avoueson sont grosses, qe si eux en assignement de dower deivent passer deivent estre motez <sup>5</sup> com grosses assignez.

*Hervi.* Ceo est veirs hors de maynz le Roi et non aliter.

*Denum.* Uncore demaundoms jugement, q'il covendra dire qe ele fut seisi etc., qe si un manoir seit graunté <sup>6</sup> a un estraunge,<sup>7</sup> sanz seisine ne put sur les fraunc tenauntz pur service avowerie fere. Nent plus par de sa.

*Ing.* Non est simile. Le baroun est garaunt de dower et <sup>8</sup> sa seisine suffit a la femme.

*Scrop.* Nent assigné par le heir : prest etc.

*Hervi.* Nay,<sup>9</sup> le fet le gardeyn en ceo cas est le fet l'eir.

Et ceperunt alium diem.<sup>10</sup>

III.<sup>11</sup>

La Prioressse de N. se pleint qe A. atort prit ces avers etc.

A. com baillife Cristiane qe fut la femme H. conust la prise bone e resnable, par la r[eson] qe ele tient de C. sa dame un mees e ij. bovez <sup>12</sup> de terre en N. par homage, fealté e par les services de x. souz par an ; des queux services le dit H. fust seisi par my la main A. sa predecessour, com par mi etc. Après la mort, C. com fiz e heir le dit H. assigna le manoir de K. au dite Cristiane en noun de dower, a que manoir ceux services sunt regardanz. E pur les x. souz arere jour de la prise si conust etc.

*Scrop.* Vous avez bien entendu coment il ont dit qe ceux services

<sup>1</sup> Text from *R*: compared with *M*, *P*. <sup>2</sup> appendaunt *M*. <sup>3</sup> *Scrop* chalangea le counte *P*. <sup>4</sup> qe *R*. <sup>5</sup> notez *M*. <sup>6</sup> reconu *M*; rendu *P*. <sup>7</sup> *Ins.* par fin *M*, *P*. <sup>8</sup> *Ins.* de *R*. <sup>9</sup> Nanyl *M*; om. Nay *P*. <sup>10</sup> Et sic ad patriam *P*. <sup>11</sup> Text from *Y* (f. 173). <sup>12</sup> bove *Y*.

## II.

A bailiff made cognisance of a taking in the name of a doweress, for that she holds in dower a manor to which the services of the plaintiff were regardant. And he said that the husband was seised of the manor and of the services by the plaintiff's hand, and that [the defendant] holds the manor by her husband's endowment and the heir's assignment. This cognisance was challenged because he does not say that the services were assigned. And it was said by *Scrope* that service and advowsons are grosses, so that if on an assignment of dower they are to pass, they ought to be specially mentioned and assigned as grosses.

STANTON, J. That is true only when they come out of the King's hands.

*Denom.* Still we pray judgment, for she ought to say that she was seised, for if a manor be granted<sup>1</sup> to a stranger, he cannot without seisin make an avowry upon the free tenants. No more can it be done here.

*Ingham.* Not similar. The husband is the warrantor of the dower and his seisin suffices for the wife.

*Scrope.* Not assigned by the heir: ready etc.

STANTON, J. Not so. The guardian's deed in such a case is the heir's deed.

They took another day.<sup>2</sup>

## III.

The Prioress of N. complained that A. wrongfully took her beasts etc.

A. as bailiff of Cristiana, wife that was of H., made cognisance of the taking as good and lawful, for the reason that [the plaintiff] holds of Cristiana, his lady, a message and two bovates of land in N. by homage, fealty, and the services of ten shillings a year; and of these services H. was seised by the hand of A., predecessor [of the plaintiff], as by etc. After [H.'s] death C., as son and heir, assigned the manor to Cristiana by way of dower, and to it these services are regardant. And for the ten shillings arrear on the day of the taking, he makes cognisance etc.

*Scrope.* You have heard how they have said that these services

<sup>1</sup> Or 'rendered' or 'knowledge'd by fine.'

<sup>2</sup> One book says they went to the country. See the other reports.

sunt regardanz au manoir. E vous veez bien la ou seignurie ou feez ou avowesons de eglises doivent estre assignez a femme en dowere il serront assignez com gros, ut patet in cancellaria. Mès il dient qe les services etc.

Et non valuit.

*Scrop.* D'autrepart ele ne fut unkes seisi de ces services, ne C. qe lui assigna. Jugement etc.

*Hervi.* Si le gardein le eust assigné ele covensit lier s'avowerie de la seisine sun baroun de qi dowement ele cleime.

Et postea *Grantebrige.* H. son baron unkes seisi de ces services e prest del averer.

Et le baillife pria eide de sa dame. Et habuit etc.

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 314d, Essex.

William le Lettle was summoned to answer the Abbess of Berking of a plea wherefore he took her beasts and unlawfully detained them against gage and pledges etc. And thereupon the Abbess, by William of Finchingfelde, her attorney, says that on [July 1, 1308] Monday next after the feast of St. John Baptist in A.R. 1, at Rothing Plome<sup>1</sup> in a place called Caldecotefeld, William took two horses of hers and unlawfully detained them against gage and pledges until etc.: damages, forty shillings. And thereof she produces suit.

And William, by Richard de Berners his attorney, comès and defends tort and force when etc. And as bailiff of one Cristiana, wife that was of Ralph de Berners, he confesses that he took the beasts: and lawfully, for he says that the Abbess holds of Cristiana five messuages and a hundred acres of land in the said vill by homage and fealty and by the service of paying twenty shillings to the King's scutage of forty shillings, when it shall occur, and so in proportion, and by doing suit to Cristiana's court of Berewyke<sup>2</sup> from three

#### 24. WALDING *v.* FAIRFAX.

Bref foundu sour statut pur tenaunt a terme de vie vers cely qe fust feffé cely qe recoveri, et nient etc.

#### I.<sup>3</sup>

Idoyne la fille Piers porta bref sur le statut vers William Fairfaux, et demaunda un mies etc. countaunt de sa seisine demene com du

<sup>1</sup> Mod. Leaden Roding.

<sup>2</sup> Mod. Berwick Berners near Leaden Roding.

<sup>3</sup> Text from A: compared with D, T, P. Headnote from A.



are regardant to the manor. And you see that where seignories or fees or advowsons are to be assigned to a woman in dower, they shall be assigned as a gross, as is apparent in the Chancery.<sup>1</sup> But they say that the services etc.

It was of no avail.

\* *Scrope*. Again, she never was seised of these services, nor was C. who assigned them. Judgment etc.

STANTON, J. [Even] if the guardian assigned them, she would have to lay her avowry in the seisin of her husband, on whose endowment she claims.

Afterwards *Cambridge*. H., her husband, was never seised of those services : ready to aver it.

The bailiff prayed aid of his lady. He had it etc.

#### Note from the Record (*continued*).

weeks to three weeks; and of this homage, fealty and services Ralph de Berners was seised by the hands of Maud de la Lenelaunde<sup>2</sup> sometime Abbess, predecessor of the present Abbess as belonging to Ralph's manor of Berewyk; and he says that after the decease of Ralph there succeeded him in the said manor one Edmund, as his son and heir; and Edmund assigned that manor with the appurtenances to Cristiana by way of dower; and because the fealty of the Abbess was arrear to Cristiana on the day of the taking, he [William] took one horse; and because the said suit was arrear to Cristiana for three years before the day of the taking, he took the other horse, as well he might.

And the Abbess says that William cannot avow the distress lawful in this behalf; for she says that Ralph never was seised of the said services by the hands of Maud, sometime Abbess, her predecessor etc.; and this she is ready to aver by the country etc.

And William cannot abide (*expectare*) that averment without Edmund and Cristiana. Therefore be Edmund and Cristiana summoned to be here in the quindene of Easter to answer along with etc.

#### 24. WALDING *v.* FAIRFAX.

*Qu.* whether *quod ei deforciat* will lie against the feoffee of the recoveror.

##### I.

Idonea, daughter of Peter, brought her writ upon the Statute against William Fairfax, and demanded a messuage etc., counting of

<sup>1</sup> When dower is being assigned there to the widows of the King's tenants in chief. <sup>2</sup> Or *Levelaunde*.

fraunctenement etc. en temps de pees etc. en temps le Roy E[dward] piere etc. et s'il le veot dedire etc. seute bone etc.

William voucha a garraunt William de Clervaux, qe vient en court et garaunti,<sup>1</sup> vers qi<sup>2</sup> Idoigne counta etc. com tenaunt par sa garrauntie.

*Hedon.* Le bref est doné par estatut vers celui que recovere par default, mès<sup>3</sup> William Fairfax ne recovers poynt, ne il<sup>4</sup> fust nyent partie al aultre bref, et *per consequens* hors de cas de statut. Jugement du bref.

*Scrop.* Statut tailla<sup>5</sup> remédie pur cely qe perdy vers le tenaunt de la terre, et William Fairfax est tenaunt; par quei vers aultre qe vers luy ne pooms nostre bref porter. Jugement etc.

*Denom.* Le bref est lyveré<sup>6</sup> vers luy<sup>7</sup> qe recovers<sup>8</sup> par statut, qe veot 'quod ostendat ius suum secundum formam brevis sui quod prius impetravit.'<sup>9</sup> Mez ore ceo ne poet il faire, q'il ne fust mye partie al premir bref; par quei etc.

*Scrop.* Le bref est porté vers William Fairfax tenaunt de la terre, et il vous ad vouché a garraunt, et *per consequens* affirmé le bref; par quei etc. Et d'aultrepart le statut est fait en amendement de la comune lay. Dount si jeo eusse porté moun bref vers William Clervax, il dirroyt qe<sup>10</sup> rien n'avoit<sup>11</sup> ne rien<sup>12</sup> clama; par quei vers luy n'averay jeo mye mon recoverir,<sup>13</sup> et William Fairfax<sup>14</sup> est tenaunt de la terre, par quei si jeo ne sei<sup>15</sup> r[eceu] a porter mon bref vers le tenant jeo serrei sanz recoverir, quod esset contra formam statuti.

*Toud.* Nous recoverames lez tenemenz par bref de droit en la court l'Ercevesqe,<sup>16</sup> le quel droit est termyné; et si nous fussoms chacé a moustrer nostre droit, ceo serroit a pleder solom le premir<sup>17</sup> bref. Mez de ceo n'ad pas la court<sup>18</sup> garraunt, et<sup>19</sup> qe nous ne fumes mye partie al bref, et le bref et le procès par ount nous recoverames si demoert en la court l'Ercevesqe d'Everwike.<sup>20</sup> Par quei nous demaundoms jugement si de ceo pleé dount la court n'ad nul garraunt nous en resp[oundre]<sup>21</sup> devons estre chacé.

*Herri.* Par defaute ou coment recoveristes vous?

*Toud.* Par defaute; mès del houre *ut supra*.

*Scrop.* Statut doune le bref en certeynz paroullez vers celui

<sup>1</sup> graunta A; grauntist D; garr. T.    <sup>2</sup> Om. qi A, T; ins. D, P.    <sup>3</sup> mes D, P; mesme T; vers A.    <sup>4</sup> Ins. ne D.    <sup>5</sup> taille P; taille D.    <sup>6</sup> done P.    <sup>7</sup> celi P.    <sup>8</sup> recoure D.    <sup>9</sup> secundum tenorem prioris brevis P.    <sup>10</sup> qi A; qe D, T.    <sup>11</sup> nad P.    <sup>12</sup> Ins. ne D, P.    <sup>13</sup> Om. to after next recoverir A, T.    <sup>14</sup> Text from D, P.    <sup>15</sup> fuse P.    <sup>16</sup> le court de Everwyke P.    <sup>17</sup> Om. premir T.    <sup>18</sup> Ins. a D.    <sup>19</sup> Om. et (?).    <sup>20</sup> si est en la franchise de E. P.    <sup>21</sup> respons' D.

her own seisin as of freehold etc. in time of peace, in the time of [Edward I.]; and if he will deny, [she has] good suit etc.

William vouched to warrant William of Clairvaux, who came into court and warranted; and Idonea counted against him as tenant by his warranty.

*Hedon.* The writ is given by Statute against one who recovers by default; <sup>1</sup> but William Fairfax did not recover, and was no party to the other writ. Consequently this is outside the Statute. Judgment of the writ.

*Scrope.* The Statute devises a remedy against the tenant of the land for one who has lost; but Fairfax is tenant; so we can bring our writ against none but him. Judgment etc.

*Denom.* The writ is given by Statute against him who has recovered, and says, 'Let him show his right according to the form of his writ which he aforetime sued.' But that he cannot do here, for he was no party to the former writ. Therefore etc.

*Scrope.* The writ is brought against William Fairfax, tenant of the land, and he vouched you to warrant, and consequently he affirmed the writ. Therefore etc. Besides, the Statute was made in amendment of the common law. So, if I brought my writ against William Clairvaux, he would say that he had nothing and claimed nothing; so I could not have my recovery against him; and William Fairfax is tenant of the land; so if I am not allowed to bring my writ against him, I shall be without recovery, and that would be against the form of the Statute.

*Toudeby.* We recovered the tenements by writ of right in the court [of York],<sup>2</sup> and so the right is determined; and if we were driven to show our right, that would be to plead according to the nature of the former writ. But the Court has no warrant for that, for we were no party to that writ; <sup>3</sup> and the writ and process whereby we recovered remains in the court [of York]. Therefore we pray judgment whether we ought to be driven to answer in this plea, for which the Court has no warrant.

STANTON, J. How did you recover? By default or how?

*Toudeby.* By default; but since (as above).

*Scrope.* The Statute by express words gives this writ against the

<sup>1</sup> Stat. Westm. II. c. 4. The Statute does not expressly meet the case of an alienation after the recovery. Coke, Sec. Inst. 352, relying on cases of Edward III.'s time, holds that the action will lie against the alienee.

<sup>2</sup> Some of our books make it 'the court of the Archbishop,' having converted *Everwyke* into *Erceveske*.

<sup>3</sup> The text at this point is not very plain.

q'est deforceour etc., et doune al demaundaunt sa replicacioun si le tenaunt allegge<sup>1</sup> q'il est entré par jugement. Dount nyent plus qe le tenaunt n'est<sup>2</sup> restreint de sa r[esponse] q'il ne poet eslire ou vouchier ou allegger le jugement prymer a sa voluté, nyent plus par ley ne deit le demaundaunt estre restreint de<sup>3</sup> soun purchaz q'il ne poet auxi bien son bref porter devers aultre<sup>4</sup> com devers celui q'il recovery etc. Jugement.<sup>5</sup>

*Berr.* Ceo serroit graunt duresse a ouster homme de soun purchaz pur ceo q'il ne fust partie al premir jugement<sup>6</sup> ou il poet eslire<sup>7</sup> tiele r[espounse] ou aultre; mès il n'ount pas etc. Et<sup>8</sup> pur ceo agardez<sup>9</sup> vos jours.

{ *Ad*<sup>10</sup> *alium diem Toud.* pur le tenaunt. Vous avez conu coment nous portames nostre bref de droit en la court de E. et la recoverymes. Et le original est en mesme la court, et statut veut qe le tenaunt mostre soun droit solum le primer bref, et ceo ne pooms mye avaunt qe le bref soit ceins. Et n'entendoms qe vous eiez power a trier nostre droit solum la nature del primer bref, tut veusisoms mostrer, saunz ceo qe vous ussez ceinz le bref.

*Scrop.* Vous avez pledé a nostre actioun. Par quei vous n'avendrez a pleder a la juredictioun.

*Staunt.* Quel oure q'il vigne avaunt jugement rendu, s'il poet mostrer qe la court n'ad power, nous ly receveroms.

*Scrop.* Vous avez bien entendu coment il ount dit qe eux mesmes porterent bref en la citee de E. E pur ceo qe celi bref n'est pas ceinz il voleint toller la juredictioun. La vous dioms nous q'il ne porta unqes tel bref vers nous, eins fit W. le fiz R. Fafaux soun pere.

Et sic habuit diem.

Quere quid fieri debeat de iure.}

## II.<sup>11</sup>

William de Clervaus porta soun bref etc. patent en la court de Everwike devaunt le meir et les bailiffs de la ville de Everwik vers iij., qe tyndrent en comune a terme de lour vies, et demaunda certeinz tenemenz, issint qe les tenauntz fesoient defaute après defaute. Par quei seisine de terre fuist agardé a W[illiam]. Par quel agard il recoversa. Puis après [William] dona mesme les tenemenz a un

<sup>1</sup> sil allegge *D.*    <sup>2</sup> est *D.*    <sup>3</sup> pur *D.*    <sup>4</sup> autres *T.*    <sup>5</sup> qil reconi jug' *T.*;  
qe recoveri jug' *D.*    <sup>6</sup> bref *D.*    <sup>7</sup> *Om.* eslire *D.*    <sup>8</sup> *Om.* etc. et *D.*    <sup>9</sup> gardez *D.*  
<sup>10</sup> Substitute for last four speeches *P.*    <sup>11</sup> Text from *B.*



deforciant, and gives the demandant a replication if the tenant alleges that he entered by judgment. So the demandant ought no more to be restrained by law from purchasing a writ which he can bring against a person who is not the recoveror [in the previous action], than the tenant in his answer can be restrained from his free election between vouching or alleging the previous judgment. Judgment.

BEREFORD, C.J. It would be a great hardship to oust a man from his [writ] because [the terre tenant] was no party to the previous judgment, where the tenant can elect between one answer and another. But they have not etc.<sup>1</sup> So keep your days.

{On another day *Toudeby* for the tenant: You have confessed that we brought our writ of right in the court of [York] and recovered there. And the original [writ] is in that court. And the Statute says that the tenant is to show his right according to the former writ, and that we cannot do before the writ is here. And we do not think that you have power to try our right according to the nature of the former writ, even if we wished to show [that right], unless you have the writ here before you.

*Scrope*. You have pleaded to our action. So you cannot get to plead to the jurisdiction.

STANTON, J. If at any time before judgment rendered he can show that this Court has not power, we will receive him.

*Scrope*. You have fully heard how they have said that they themselves brought a writ in the city of York; and they wish to deprive [you] of jurisdiction because that writ is not here. Now we tell you that he never brought such a writ; but W. the son of R. Fairfax his father [brought it].

So he had a day.

Query: what ought to be done by law.}

## II.<sup>2</sup>

William of Clairvaux brought his writ [of right] patent in the court of York before the mayor and bailiffs of the town of York against three persons who held in common for term of their lives, and he demanded certain tenements. The tenants made default after default. So seisin was awarded to William, and by this award he recovered. After this he gave the tenements to one William Fairfax,

<sup>1</sup> What they have not done is not very plain.

<sup>2</sup> This version is given in the Old Edition, p. 91.

W. Fairfox, et il seisi par le doun. Puis vindrent les iij. qe tyndrent en comune et porterent lour *precipe quod reddat* sour Statut de Wastm[oustier] seconde vers W. Fairfox. Le quel W. voucha a garraunt W. le fuiz W[illiam] Clervaux, qe vint en court et garr[aunti]. Les deux qe porterent le bref furent nounsuytz, et le tierce siwit pour sa purpartie.

*Scrop* counta issint: Qe a tort par sa garrauntie lui deforce la tierce partie etc.; et pour ceo a tort qe c'est soun droit come de soun fraunctenement etc. dount ele fuist seisi del entier, ensemblementz ove les deux qe ne siwent pas, en soun demene come de fraunctenement; l'espleez etc. Et tendi siwite etc.

*Hedone*. C'est un bref q'est douné par statut, et veot estre porté vers celui qe rescoweri et vers nul autre. Ore est W. Fairfox tenaunt del demene et W. de Clervaus nent. Jugement du bref.

*Scrop*. Il est tenant par sa garrauntie, et issint le bref bon. Estre ceo statut veot q'il eit soun recoverir vers celui q'est vouché coment q'il soit tenant. Autrement ensiwereit qe meintenaunt après le recoverir par defaute q'il serroit saunz recoverir s'il alienast etc.

*Stant*. Il covient qe vous pledietz a autre fourme si vous lui voilletz ouster de soun bref.

*Hedoun*. Il est a recoverir fraunctenement par un bref foundue sour statut; le quel bref n'est mye doné sy noun la ou tenemenz sount tenuz a terme de vie et perdutz par defaute après defaute; le quel bref doit estre portee vers celui qe recoveri auxint come statut dit après. Ore est W. Fairfox tenaunt dil demene et W. de Clervaux n'ad rien. Jugement du bref.

*Stantone*. Vous ne pledietz mye a lui solome dreit fourme.

*Denom*. Qaunt tenant a terme de vie perde par defaute après defaute, a la comune lei il fuist sauntz recoverir. Mès ore remedie est douné par statut vers celui qe recovery. Et il porte soun bref vers J. Fairfox, qe ne fuist mye partie al recoverir, en qi bouche est naturellement d'avoir plidié al abatement du bref, pur ceo q'il ne recoverit point mès W. de Clervaus. Et depuis q'il vouché, il ne puist dedire la garrauntie, et il ne puist autre chose sy noun garr[auntir], et issint est il tenaunt par sa garrauntie et noun pas de demene. Et cestui bref ne gist nent sy noun vers celui q'est seisi par my le recoverir, et W. de Clervaux nyent seisi. Par quei nous demaundoms jugement du bref.

*Scrop*. C'est nostre bref de droit a recoverir ceo qe nous perdimes. Par quei il ne r[espount] nyent. Jugement de lui come de noun

who was seised by the gift. Then came the three who held in common and brought their *praecipe quod reddat* under Stat. Westm. II. against Fairfax. He vouched to warrant W. the son of W. of Clairvaux, who came into court and warranted. Two of those who brought the writ were non-suited; and the third sued for her share.

*Scrope* counted thus: Wrongfully does he by his warranty deforce the third part etc.; and wrongfully because it is [the demandant's] right as of her freehold etc., whereof she was seised of the whole, together with the two others who do not sue, in her demesne as of freehold [by taking] esplees etc. (And he tendered suit.)

*Hedon*. This is a writ given by Statute and is to be brought against him who recovered and against none other. But here W. Fairfax is tenant in demesne and W. de Clairvaux is not. Judgment of the writ.

*Scrope*. He is tenant by his warranty, and so the writ is good. Besides, the Statute means that [the loser in the previous action] is to have his recovery against a vouchee as if he were tenant. Otherwise it would follow that at once after a recovery by default, the [statutory remedy] would be gone if there were an alienation.

STANTON, J. You will have to plead in other wise if you would oust him from his writ.

*Hedon*. He is trying to recover freehold by a writ founded on Statute; and the writ is only given where the tenements are held for term of life and are lost by default after default; and it must be brought against him who recovered, as the Statute proceeds to say. But here W. Fairfax is tenant in demesne, and W. de Clairvaux has nothing. Judgment of the writ.

STANTON, J. Your plea against him is not in the right form.

*Denom*. When tenant for life loses by default after default, he was without recovery at the common law. But now a remedy is given by Statute against the recoveror. And here the writ is brought against [W.] Fairfax, who was not party to the recovery; and it naturally lay in his mouth to plead to the abatement of the writ on the ground that, not he, but W. Clairvaux recovered. And as he vouched, [Clairvaux] could not deny the warranty and could say nothing, but had to warrant; and so [Clairvaux] is tenant by warranty, not tenant in demesne. And this writ lies not against any save him who is seised by the recovery, and Clairvaux is not seised. Therefore we pray judgment of the writ.

*Scrope*. This is our writ of right to recover what we lost; and he makes no answer. Judgment of him as of one undefended; and we

deffendu, et prioms seisine de terre etc., qar tout fuist issint qe le voucheour <sup>1</sup> pout avoir abatu le bref, par my sa garrauntie si est il tenaunt, et issint est nostre bref bon.

*Stantone.* Yl covient qe vous seietz a un d'une part et d'autre le quel les tenemenz furent perduz par defaute ou noun etc., qar vous estes unqore hors de forme, qar il covient que vous dietz qaunt et coment le bref fuist porté et coment vous recoverastes.

Et a ceo dit *Herle* : Issint covient estre.

*Hedone.* Sire, si vous veietz qe le bref i gise nous r[espondroms] voluntiers.

*Stauntone.* Vous ne poietz par autre voie pleder ne passer, qar nous ne poms savier coment le plee doit avoir nesaunce en autre fourme, puisqe vous supposietz qe autrefoithe y avoit play entre mesme les persones.

*Hedone.* W. de Clervaus porta soun bref de droit en la court d'Everwyk et recovery par jugement. Jugement, depuis qe nous sumes seisi par jugement en nostre bref de droit, s'il doive estre r[espondu], le quel jugement esta unqore en sa force nyent defait.

*Scrop.* Par quel jugement ?

*Hedone.* Par defaute après defaute. .

*Scrop.* Moustretz vostre droit.

*Hedone* dit le counte auxint come il avoit counté en la court d'Everwike; et puis demaunda jugement desicome il avoit recovery par bref de droit, s'il actione puisse avoir.

*Scrop.* Voiletz avoir deffense ?

*Stant.* Vous ne deffendrez pas unqore; qar il demaudent jugement si actione puissetz avoir, issint qe ceo q'il dit est excepcion a vous forbarrer d'action s'il ne <sup>2</sup> pout averrer, et ne mye a moustrer soun droit.

*Scrop.* Jeo entendi q'il eust moustré soun droit. Mès ore demaundoms jugement desicome il ad conu qe nous perdimes les tenemenz par defaute etc., et nous n'avoms estat forsqe a terme de vie, et issint en cas de statut, qar statut doune remede la ou tenaunt a terme de vie, per la lei d'Engleterre, en dowere ou en fee taillé perdent par defaute après defaute q'il recovere par bref foundu sour statut. Par quei il ne r[espondent] nient. Jugement de eux come de noun defendu.

Puis leindemeyn *Toud.* Sire, nous portames nostre bref de droit en la court (*ut prius*) et recoverames (*ut supra*); et n'entendoms pas

<sup>1</sup> vouch' B.

<sup>2</sup> Corr. le (?).



pray seisin of the land etc., for even if the voucher<sup>1</sup> could have abated the writ, he [did not, but Clairvaux now] is tenant by his warranty; and so our writ is good.

STANTON, J. It behoves that you on both sides agree as to whether the tenements were lost by default or not etc.; for you are still out of form, for you ought to say when and how the writ was brought and how you recovered.

To this *Herle* said: So it ought to be.

*Hedon*. Sir, if you see that the writ lies, we will answer willingly.

STANTON, J. You cannot plead or make progress in any other way, for in no other way can we learn how the plea had its origin, since you suppose that heretofore there was a plea between the same parties.

*Hedon*. W. de Clairvaux brought his writ of right in the court of York and recovered by judgment. And, since we are seised by judgment in our writ of right, and that judgment still stands in force and undefeated, we pray judgment whether he ought to be answered.

*Scrope*. By what [sort of] judgment?

*Hedon*. On default after default.

*Scrope*. Show your right.

*Hedon* repeated the count which he counted in the court of York; and then he prayed judgment whether, since he had recovered by writ of right, [the demandant] could have action.

*Scrope*. Do you [judges] wish for our defence?

STANTON, J. You cannot yet defend; for they pray judgment whether you can have action; so that what he is saying is an 'exception' to bar you from action if he can<sup>2</sup> aver it; and he has not [yet] been showing his right.

*Scrope*. I understood that he had shown his right. But now we pray judgment since he has confessed that we lost the tenements by default etc., and we have an estate only for term of life, and thus we are in the statutory case; for the Statute gives a remedy, so that where tenant for life, by the curtesy, or in dower, or in fee tail, loses by default after default, he is to recover by a writ founded upon the Statute. So they make no answer. Judgment of them as of the undefended.

Next day *Toudeby*. Sir, we brought our writ of right in the court (as before) and recovered (as before); and we do not think [that

<sup>1</sup> Apparently the voucher, not the vouchee, is meant; but the text is ambiguous. <sup>2</sup> The text says 'cannot.'

ge saunz le recorde et procees del primer bref de droit en la court (*ut prius*) ensemblement ove le bref q'est garraunt a ceo plee tenir etc., qar il covient qe le bref et le procees furent ceinz. Et si vous veietz qe cestui bref ici puist estre garraunt, nous r[espondroms] voluntiers.

*Scrop.* Ceo ne covyent mye; qar tout fuist le bref ceinz, vous n'averetz mye oy du bref, qar ceo bref est garraunt et le procees par ceux qe ount estat a terme de vie etc.

*Herle.* Vous ne poietz mie recoverer vostre fraunctenement avant qe le droit soit trié, et ceo ne puist estre saunz l'autre bref. Par quei etc., qar statut veot qe le procees soit '*secundum tenorem brevis quod prius super ipsum impetraret etc.*' Estre ceo si un homme duist joindre la mise etc. ou bataille, homme ne puist faire sauntz etc.

*Scrop.* Nous le avoms veu ceinz q'il ount pledé saunz l'autre bref.

*Stant.* Jeo vous troveray le revers de la mayn Sire Ingham de Fleyngham escript.

*Toud. ad idem.* Et jeo mesmes le troverai, qar le ai jeo mesmes pledé avaunt ces houres etc.

*Scrop.* Qe cestui W. q'ore est tenaunt par sa garrauntie ne recoveri point vers nous, prest etc.

*Stantone.* Vous voilletz abatre vostre bref demene.

*Scrop.* Nanil, mès s'il ne voille l'averrer, jeo entenke avoir seisine de terre, q'il est vouché come celui qe recoveri; ore n'est il mye celui, q'il est fuiz et heir celui qe recovery etc.

Tamen non allocatum. Et habuit diem etc.

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No 183), r. 308, York.

Mariota, daughter of Peter Waldynge, by her attorney, demands against William Fayrfax of York a third part of a messuage with the appurtenances in York, which she claims to hold for the term of her life, and which William unlawfully deforces from her etc.

And be it known that two parts of the messuage are excepted etc., because Gandinus of York and Thomas his son, parceners etc., were aforetime summoned to sue along with [Mariota] and did not sue etc.

And William comes by his attorney, and aforetime he vouched thereof to warrant William de Claris Vallibus of Croft, who now comes by summons, by Joricius of Clementhorpe his attorney, and warrants him etc.

And Mariota, by her attorney, demands against him the said third part with the appurtenances, whereof she herself was seised as of her free tene-

this Court will entertain this action] without the record and process of the previous writ of right in the court (as before) together with the writ which gives warrant to hold this plea; for it behoves that the writ and process be here. And if you think that this writ here is warrant enough, we will gladly answer.

*Scrope.* That is not needed; for albeit that writ were here, you would not have oyer of it; for the present writ is the [Court's] warrant for this proceeding on the part of those who have an estate for life etc.

*Herle.* You cannot recover your freehold before the right is tried, and that cannot be without the other writ. Therefore etc.; for the Statute says that the process is to be 'according to the tenor of the writ which he previously sued against him.' Moreover, if the mise or battle were to be joined, this could not be done without [the other writ].

*Scrope.* We have seen here a case which was pleaded without the other writ.

STANTON, J. I can find you the contrary in the handwriting of Sir [Ralph de Hengham].<sup>1</sup>

*Toudeby* to the same effect. I also could find the same, for I myself have pleaded [in that way] before now.

*Scrope.* This [Clairvaux] who is tenant by his warranty did not recover against us: ready etc.

STANTON, J. You are trying to abate your own writ.

*Scrope.* Not so, but if he will not aver [the contrary], I look to have seisin of the land; for Clairvaux is vouched as the recoveror; and that he is not; he is the recoveror's son and heir.

[But this] was not allowed. He had a day etc.

#### Note from the Record (*continued*).

ment in time of peace in the time of Edward [I.], by taking esplees thereof to the value etc. And thereof she produces suit etc.

And William de Claris Vallibus says that he ought not to answer her thereof etc.; for he says that aforetime in the court of the city of York before the Mayor and Bailiffs he brought his writ of right patent against her and Gandinus and Thomas, who do not sue etc., for the said messuage with the appurtenances, and by the judgment of the same court he recovered against them the messuage, of which she now demands a third part against him; and he prays judgment.

And Mariota says that this writ is competent to her by statute etc., in which it is contained that when anyone alleges a recovery by judgment etc., it is necessary for him to show by what judgment etc., and if it be

<sup>1</sup> But see the French text.

Note from the Record (*continued*).

found [that it was a judgment] by default, then the tenant ought to show his right upon the former writ etc.; and she says that she together with etc. lost the messuage by default in the court of the said city, but not at the suit (*sectam*) of the said William de Claris Vallibus, but at the suit (*prosecucionem*) of one William son of Robert de Claris Vallibus, who brought that writ of right against them etc.; and she prays judgment. (*Note continued on opposite page.*)

25. DURANT *v.* COGAN.<sup>1</sup>

Replevine, ou il dit q'il fust reseaut hors de sa vewe; l'autre dit q'il avendra pas saunz mostrer coment: ou piert qe cely qe ad vewe purra avower destresce en real chemin pur amerciement.

Un A.<sup>2</sup> fust attaché a respoundre a Roggier Bole<sup>3</sup> de plee par quei atort prist cez avers etc.

*Fris.*<sup>4</sup> avowa la prise etc., par la r[esoun] q'il tient le manier de Maltone,<sup>5</sup> a quel manier il ad vewe de fraunkplegge<sup>6</sup> ij foitz par an de toutz iceaux qe sount reseautz denz la purcente du manier avaunt dit, videlicet post festum S. Michaelis etc. et Pasche, issint qe a la lete tenu etc. si fust présenté q'un Hughe le Taillour avoit levé hu et cry sour mesme cesty Roggier etc. et a<sup>7</sup> droit, par quei il fust amercié a vj. deners; par quel amerciement il avowe etc.

*Denom.* La ou il ad avowé etc. q'il tient le manier etc. a quei il ad vewe etc. ou fust présenté *ut supra* etc., la<sup>8</sup> dioms q'un R.<sup>9</sup> de la Huse<sup>10</sup> de Maltone ad sa vewe en mesme le manier de touz lez reseautz etc.; et vous dioms qe nous sumes reseautz en la vewe Raufe: prest etc.

*Herle.* Seoms adeprimes a un qe nous sumes seignour du manier et qe nous avoms vewe de toutz les resseautz etc., et vous estes reseaut de denz le dit manier etc.

*West.* Il ne deit avoir la vewe sy noun de les reseautz etc.; et del houre qe nous traversoms hors de sa veue,<sup>11</sup> jugement si a cel averement ne devoms estre r[espondu]. Et d'autre part poet estre qe vous avet veue de vos reseautz en vostre manier etc., et qe Raufe de la Huse ad auxi veue de deynz la purceynte de mesme le manier de cez reseautz, par quei vous ne poetz rien hors de vostre veue avoir. Dount nous vous dioms q'il est reseaut hors de vostre veue. Jugement etc.

<sup>1</sup> Text from *A*: compared with *D*, *T*, *P*. Headnote from *A*. <sup>2</sup> Thomas de Cogan *P*. <sup>3</sup> Bolle *T*; de la Bole *P*. <sup>4</sup> Scrop. *P*. <sup>5</sup> Bantone *P*. <sup>6</sup> ad sa lete *P*. <sup>7</sup> a tort Rog. *P*. <sup>8</sup> *Ins.* vous *D*. <sup>9</sup> Rauf *D*. <sup>10</sup> Husee *D*. <sup>11</sup> seisine *D*.



Note from the Record (*continued*).

And William de Claris Vallibus says that he does not understand that the said plea should be debated (*deduci*) in the court here etc., since the original [writ], upon which etc., is not here; and he prays judgment.

A day is given them in the quindene of Easter etc. in the same state as now.

25. DURANT *v.* COGAN.

Avowry for amercement at view of frankpledge, alleging avowant lord of a manor with view of all residents in the manor, of whom plaintiff is one. *Semble* 'not resident within your view' is a good traverse.

[Thomas de Cogan] was attached to answer Roger Bole<sup>1</sup> of a plea wherefore he wrongfully took his beasts &c.

*Friskenev* avowed the taking, for the reason that he holds the manor of [Bampton], at which manor he has view of frankpledge twice a year of all those who are resident within the precinct of the said manor, to wit, after Michaelmas and Easter; and at a leet held etc. it was presented that one Hugh the Tailor had levied hue and cry upon Roger etc., and rightfully; for which [Roger] was amerced at six pence; and for this amercement he avows etc.

*Denom.* Whereas he avows because he holds the manor etc. at which he has the view etc. whereat it was presented etc. (as above), we say that one R. de la Huse of [Bampton] has his view in the same manor of all the residents etc.; and we tell you that we are resident in the view of Ralph: ready etc.

*Herle.* First let us agree that we are lord of the manor, and that we have the view of all the residents etc., and also as to whether you are resident within the manor.

*Westcote.* He ought only to have the view of the residents etc.; and since we have traversed [him] by 'outside his view,' [we pray] judgment whether we ought not to be answered to this averment. Besides, it may be that you have the view of your residents in your manor, and that Ralph de la Huse also has the view within the precinct of the same manor of his residents, so that you can have nothing outside your view. Thus we tell you that he is resident outside your view. Judgment etc.

<sup>1</sup> For the true names see our Note from the Record.

{ *Herle*.<sup>1</sup> Ne suy pas a pleder a la vewe de touz ces receauntz, einz avoms dit qe nous tenoms le manoir et a nous vewe de touz les receaunz etc.; et vous estes reseaut.

*Denom*<sup>2</sup> *ut supra*. Seoms a un adeprimes qe nous sumes seignour del manoir a qi nous avoms vewe de toz les resseaunz, et qe vous estes reseaut.

*West*. La ou il dit q'il ad vewe par r[esoun] de soun manoir, hors de soun manoir : prest etc.

*Herle*. Il n'ad pas dedit qe nous ne sumes seignour del manoir enterement et qe nous avoms vewe de touz etc. Et vous ne poez dedire qe vous n'estes resceaut.

*West*. Put estre ensemble qe vous avez veue de touz les resceaunz en vostre manoir et qe Rauf ad vewe en mesme le manier de toz les resseaunz. Par quei vous ne poez rien hors de vostre fee demaunder. Et la dioms nous q'il est resseaunt hors de vostre vewe.}

*Hervi*. Vous ne pledez mye a luy<sup>3</sup> qar il vous dit q'il tient le manier etc. et vous<sup>4</sup> estes reseaut; par quei il avowe par r[esoun] de la reseauce; par quei ceo n'est par r[espounse] a dire hors de sa vewe saunt ceo qe vous ne peusset dire<sup>5</sup> qe luy et toutz les reseautz en mesme le lieu etc. de tot temps sount amercyables et justizables a la vewe Raufe et noun pas a le vewe etc.

*West*. S'il avowast sur moi par r[esoun] de la<sup>6</sup> seignourye par services ariere, ne serrey jeo bien r[eceu] a dire hors<sup>7</sup> de soun fee? Sic ex parte ista, depuis q'il avowe par r[esoun] de sa vewe etc. qe bien dey estre r[eceu] a dire hors de sa vewe.<sup>8</sup>

*Herle*. Mesqe Raufe de la Huse mesme fust amercyé a nostre lete par presentement etc., nous luy purrioms destreindre par my et par tote de deynz la purceynte du manier, en le<sup>9</sup> real chemyn et par tout. Par moult plus fort vous qe n'estes forsqe fraunktenaunt res[eaunt] etc. par my et par tot etc. *Teste* l'Evesqe de Hereforde<sup>10</sup> qe fit avowerie sur Roggier de Mortymer en tiel cas etc.<sup>11</sup>

*Pass*. Noun freit,<sup>12</sup> eynz est un article de eyre.

*West*. Vous ne poez avower par r[esoun] de seignourye, eynz par res[oun] de un real jurisdiccoun, ou vous ne poet vewe avoir plus avaunt qe vostre jurisdiccoun<sup>13</sup> se estent. Mez ore dioms nous<sup>14</sup> hors de vostre vewe, et *per consequens* hors de vostre jurisdiccoun et de vostre poer.<sup>15</sup>

*Hervi*. Gardez vos jours<sup>16</sup> etc. ad audiendum iudicium etc.

<sup>1</sup> Substitute for last two speeches *P*. <sup>2</sup> A cross set against this name seems to indicate a mistake *P*. <sup>3</sup> Pledez a ly *P*. <sup>4</sup> *Ins.* dites qe vous *D*, *T*. <sup>5</sup> vous diez *P*. <sup>6</sup> *Om.* la *D*, *T*; sa *P*. <sup>7</sup> *Om.* to after next hors *T*. <sup>8</sup> wewe *D*. <sup>9</sup> *Om.* le *D*. <sup>10</sup> Hertforde *T*. <sup>11</sup> *Om.* Teste . . . etc. *P*. <sup>12</sup> friez *P*. <sup>13</sup> *Ins.* ne *D*, *P*. <sup>14</sup> *Ins.* qe *D*. <sup>15</sup> dioms qe le lu est *P*. <sup>16</sup> End of case *P*.

{*Herle*.<sup>1</sup> I am not here to plead as to the view of all [his] residents. But we have said that we hold the manor, and that the view of all the residents is ours ; and he is a resident.

*Denom* on the same side. Let us first agree that we are lord of the manor, at which we have the view of all the residents, and that you are a resident.

*Westcote*. Whereas they say that he has the view by reason of his manor, [we say] 'outside his manor': ready etc.

*Herle*. He has not denied that we are lord of the manor integrally and that we have the view of all etc. And you cannot deny that you are a resident.

*Westcote*. It is possible that you have a view of all the residents in your manor, and that Ralph has a view in the same manor of all [his] residents, so that you cannot demand anything outside your fee.<sup>2</sup> So we tell you that he is resident outside your view.}

STANTON, J. You do not meet his pleading ; for he tells you that he holds the manor etc. and that you are resident ; so he avows by reason of the residence ; so it is no answer to say 'outside his view', unless you can say that [the plaintiff] and all others residing in the same place have from all time been amerciable and justiciable at the view of Ralph and not at the view [of the avowant.]

*Westcote*. If he avowed upon me by reason of [a] seignory for services arrear, should I not be received to say 'outside his fee' ? So in this case : since he avows by reason of his view etc., I ought to be received to say 'outside his view.'

*Herle*. Even if Ralph de la Huse himself were amerced at our leet upon presentment etc., we could distrain him everywhere throughout the whole precinct of the manor, in the King's highway and everywhere. So *a multo fortiori* you, who are only a freeholder resident etc., [can be distrained] everywhere etc. Witness, the Bishop of Hereford who made avowry upon Roger Mortimer in the like case.

*Passeley*. Not so. It is an article of the eyre.

*Westcote*. You cannot avow by reason of seignory, but [you avow] by reason of a royal jurisdiction ; and you can have the view no further than your jurisdiction extends. So now we say 'outside your view,' and consequently outside your jurisdiction and your power.

STANTON, J. Keep your days etc. to hear judgment etc.

<sup>1</sup> An alternative for the last two speeches. It does not look correct in all respects. <sup>2</sup> Probably it should be 'view.'

## Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 308, Devon.

Thomas de Cogan, John Bosse, and Robert Crop were summoned to answer William Duraunt of a plea wherefore they took a heifer of his and unlawfully detained her against gage etc. And thereupon William by his attorney says that on [November 7, 1309] Friday next after the Commemoration of Souls in A.R. 3 at Bamptone in a place called Durantisheyes, Thomas and the others took the heifer and unlawfully detained her against gage etc.: damages forty shillings. And thereof he produces suit etc.

And Thomas and the others came by their attorney. And Thomas answers for himself and the others etc.; and he defends tort and force etc. when etc.; and he avows the taking good: and lawfully, for he says that he is lord of the manor of Bamptone with the appurtenances, and within the

26. SAMPSON *v.* GRENE.

Entré pus le lees un gardein, et abatu pur ceo qe remedye est doné plus acordaunt a ley par bref etc. par statut.

I.<sup>1</sup>

Un bref d'entré vers un tenaunt fust porté et fust le bref sic: 'in quas non habet ingressum nisi post dimissionem quam Adam de B., qui nichil inde habuit nisi custodiam ratione minoris etatis J. filii et heredis etc., inde fecit etc.'

*Herle.* Par l'alienacioun le gardeyn le heyr ad soun recoverir par assise de novele disseisine, et par mort dez persones l'entré foundu sur la novele disseisine, qe gist en ceo cas. Jugement du bref. Et hoc per statutum Westmonasterii secundum.<sup>2</sup>

*Den.* Statut ne defait mye la<sup>3</sup> comune lay. Coment dount qe statut doune recoverir par altre bref, videlicet etc., del houre qe le premir remedie n'est mye tollet par statut, jugement si cesti bref ne gise. Et d'aultrepart qi ad ij. recoverirs bien luy list eslire. Donques, coment qe vous pernez qe soun recoverir soit par aultre bref, ceo ne defait mye cesti etc.

*Berr.* A la comune lai si moun baillif alienast, jeo n'avoï moun recoverir sy noun par bref d'entré, qe ne fust ne est<sup>4</sup> par lai, qar le frauntenement totdys me demora taunt q'il aliena. Auxi a la comune ley le issue en fee taillé n'avoit aultre recoverir sy noun par bref de mortdauncestre, ou statut luy doune ore bref de fourme

<sup>1</sup> Text from *A*: compared with *D*, *T*. Headnote from *A*.      <sup>2</sup> secundi *A*, *D*.  
*T*.      <sup>3</sup> *Om.* la *D*.      <sup>4</sup> ne nest *D*, *T*.



Note from the Record (*continued*).

precinct thereof he has view of frankpledge twice a year of all the residents within the manor, to wit, once after Easter and once after Michaelmas; and he says that because William, who is resident within the manor, made default at the view of frankpledge holden there on [Oct. 4]<sup>1</sup> Saturday next before the feast of St. Denis after the said feast of St. Michael, he was amerced at six pence; and for this amercement he [the avowant] took the heifer in the said place, within his fee etc.

And William says that Thomas cannot avow the taking good in this behalf by reason of his said view; for he says that he is not resident within the precinct of his said view of frankpledge; and he prays that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded for three weeks from Easter at York.

26. SAMPSON v. GRENE.<sup>2</sup>

The old writ of entry on alienation by a guardian can no longer be brought, as Stat. Westm. II. c. 25 has given an assize.

## I.

A writ of entry against a tenant was brought and ran thus: 'into which he has no entry unless after the demise which Adam de B., who had nothing therein save a wardship by reason of the nonage of J., son and heir etc., made etc.'

*Herle.* On alienation by the guardian, the heir has his recovery by assize of novel disseisin, or, if deaths have happened, by a writ of entry founded on the novel disseisin, which lies in this case. Judgment of the writ. And this by Stat. Westm. II.

*Denom.* The Statute does not abrogate the common law. So, although the Statute give a recovery by another writ, namely [the assize], since the former remedy is not abolished, we pray judgment whether this writ does not lie. Besides, one who has two recoveries may elect between them. So, although you take it that he has recovery by another writ, that does not defeat this [writ.]

BEREFORD, C.J. At common law, if my bailiff alienated, I had my recovery only by a writ of entry; and that was not and is not [good] law, for the freehold always remained in me until he alienated. So at common law the issue in fee tail had no other recovery than by writ of mortdancestor; but Statute now gives a writ

<sup>1</sup> If the third year is meant.

<sup>2</sup> This case is Fitz. *Briefe*, 790.

de doun.<sup>1</sup> Mez s'il porte<sup>2</sup> ore le mortdauncestre recovereit il (*quasi diceret non*)? Nepurquant le mortdauncestre n'est pas tollet par<sup>3</sup> statut. Et d'autrepart vous devez entendre qe statut ne fust<sup>4</sup> fait pur nyent, eynz en defaute de ceo qe remedie acordaunt a la ley ne fust pas al aunciene ley le ordyne.<sup>5</sup> Donques en taunt qe statut doune bref in predicto casu, en taunt devez entendre qe cele remedye est plus acordaunt a ley. Par quei etc.

*Denom.* Nous vehoms en un mesme cas ou dyverse remedies sount ordyne<sup>6</sup> etc. issint qe homme poet eslire etc.

*Berr.* Oyl la ou l'un et l'autre est acordaunt a ley etc.

*Hervi.* Si le gardeyn ou termer eyt<sup>7</sup> aliené en fee, le heir ad soun recoverir par assise de novele disseisine, et par statut; et si l'assise<sup>8</sup> ne poet par mort de persones estre meyntenu, bref d'entré etc. sur disseisine; le quel recoverir est plus acordaunt a ley qe cesti. Par quei agarde la court qe vous ne preignez rien par vostre bref.

## II.<sup>9</sup>

Un A. porta son bref vers B.<sup>10</sup>

*Toud.*<sup>11</sup> Statut vous doune en ceo cas la novele disseisine, et pur vostre heir l'entré sur disseisine. Jugement de ceo bref.

*Ing.*<sup>12</sup> Avaunt statut fut ceo bref, qe n'est pas par statut defet, tot doune il autre bref en le cas; qe si jeo ay double recoverir,<sup>13</sup> l'un ne me tout pas l'autre.

*Berr.* Si statut ordeine<sup>14</sup> autre etc. il defet cest, q'il ne ordeine pas l'autre saunz cause. Dount fut la cause<sup>15</sup> del statut pur ceo qe la cause de cesti bref ne fust foundu sur nul r[esoun]. Et ordiné fut en leu de cel autre, qe le bref est sanz reson, qe suppose le gardein<sup>16</sup> avoir pouer de aliener et cel alienatioun nent repelable<sup>17</sup> taunt qe al age etc. Et ceo provez vous mesme par vostre counte, qe countez de la seisine l'enfaunt deinz age.<sup>18</sup> Et s'il fut seisi en son demene etc.<sup>19</sup> donqe n'avoit il le gardein rienz mès com bailiff. Donqe auxi<sup>20</sup> bon serreit qe<sup>21</sup> le bref qe dit 'nisi per ballivum etc.' Et de ceo qe vous dites qe statut ne le def[et] etc., avaunt statut girreit<sup>22</sup> le mordauncestre en fee taillé auxi bien comme en fee simple,

<sup>1</sup> ore le descendere *D.*    <sup>2</sup> portast *D.*    <sup>3</sup> *Ins.* le *D.*    <sup>4</sup> *Ins.* pas *D.*    <sup>5</sup> ley ordine *D.*, *T.*    <sup>6</sup> donez *D.*, *T.*    <sup>7</sup> eynt *D.*    <sup>8</sup> la seisine *A.*, *T.*; lassise *D.*  
<sup>9</sup> Text from *R.*; compared with *M.*, *P.*    <sup>10</sup> *Ins.* et counta de la seisine l'enfaunt deinz age *M.*; *ins.* supposaunt lentre par un tiel soun gardeyn *P.*    <sup>11</sup> Wilb. *M.*; Scrop. *P.*    <sup>12</sup> *Denom.* *M.*, *P.*    <sup>13</sup> deux recoverers *M.*; *sim.* *P.*    <sup>14</sup> *Om.* to after next ordeine *M.*    <sup>15</sup> *Om.* to after next cause *M.*    <sup>16</sup> garde *R.*; gardein *M.*  
<sup>17</sup> defesable *P.*    <sup>18</sup> *Om.* this sentence *R.*    <sup>19</sup> com de fee et de droit *M.*    <sup>20</sup> aux *R.*    <sup>21</sup> *Om.* qe *M.*    <sup>22</sup> corust *M.*, *P.*

of formedon. If then [the issue] brought a mortdancestor, would he recover? Not so. Yet he is not [expressly] deprived of it by Statute. Again, you should understand that the Statute was not made for nothing, but was made because a remedy accordant with [legal principle]<sup>1</sup> was not ordained by the old law. So, inasmuch as the Statute gives a remedy in the aforesaid case, you must understand that that remedy is more accordant with law. Therefore etc.

*Denom.* We have seen a like case where divers remedies were ordained and a man was allowed to elect.

BEREFORD, C.J. Yes, where both are accordant with law.

STANTON, J. If a guardian or termor has alienated in fee, the heir has his recovery by assize of novel disseisin, and this by Statute; and if no assize can be maintained because of the deaths of parties, then by writ of entry *sur* disseisin; which recovery is more accordant to law than the present [writ]. Therefore the Court awards that you take nothing by your writ.

## II.

One A. brought his writ against B.,<sup>2</sup> supposing an entry under [feoffment] by a guardian.

*Toudeby.*<sup>3</sup> In this case Statute gives to you the novel disseisin, and to your heir entry *sur* disseisin. Judgment of this writ.

*Ingham.*<sup>4</sup> This writ existed before the Statute and is not thereby abolished, though another writ is given. If I have two recoveries, the one does not deprive me of the other.

BEREFORD, C.J. If Statute ordains another writ, it abolishes this, for it does not ordain the other without cause. The cause of the Statute was that this writ was not founded on sound principle.<sup>5</sup> So in lieu of it another was ordained; for a writ is against reason if it supposes that a guardian can alienate and that the alienation is not revocable<sup>6</sup> until the full age of the ward. And you show that by your count, for you count upon the seisin of an infant under age. And if he was seised in his demesne etc., then the guardian had nothing, [but was] like a bailiff. Thus the writ would be equally good if it said 'unless by [so and so], bailiff etc.' And as to what you say about Statutes not defeating [existing remedies], before the Statute [de donis] the mortdancestor lay in the case of fee tail as well as in

<sup>1</sup> By *ley* the Chief Justice seems to mean sound doctrine.

<sup>2</sup> One book omits the end of this sentence.

<sup>3</sup> Or Willoughby or Scrope.

<sup>4</sup> Or *Denom.*

<sup>5</sup> Literally 'any reason.'

<sup>6</sup> Or 'defeasible.'

qe paroles de statut ne defount pas, eynz ordeynent bref en son cas pur l'heir en<sup>1</sup> le descendre.<sup>2</sup> Quidet vous pur ceo qe jatardys le bref de mortdauncestre i gise? Nanil. Nent plus ceo bref issi ou autre est ordiné en le cas.

*Hervi.* Pur ceo qe ou<sup>3</sup> amendement de ley ou<sup>4</sup> avant ne fut<sup>5</sup> bref ordiné pur l'eir en tiel cas, scilicet la novele disseisine, pur ceo qe le gardeyn pur rien q'il ad en les tenemenz<sup>6</sup> put aliener, qe mayntenant del estat l'enfaunt dens age recovers par disseisine<sup>7</sup> sanz attendre temps de son age, et auxi par mort de persones bref d'entré sour disseisine, quel ordeynement se accorde a r[esoun] et a ley de terre; dount il semble qe ceo qe avaunt fut,<sup>8</sup> en qey fut trové defaute, est anenty.<sup>9</sup> Par qey agarde ceste court qe vous prengnez rien par vostre bref etc.

{Celi<sup>10</sup> qe prist feffement par celi q'avoit terme, garde ou a voluté, ne fut pas tenu disseisour par comune ley, ne il mesmes qe aliena fut pas tenu disseisour par comune lei s'il ust terme etc. ut supra, ut dicitur. Quere tamen. Mès si un home qe rien avoit en ma terre ne nule possessioun vensit sour ma terre et fait chartre a B. de cele terre et B. ocupast la tere par cele chartre, l'un et l'autre en tel cas par comune ley fut disseisour, et unqore sunt, qar le feffement fait le disseisine en ceo cas.—T. xix.}

### III.<sup>11</sup>

Un A. porta sun bref d'entré vers B. et dit q'il ne oust entré si noun pus le lees qe W. qe en ceux tenemenz ne ouste qe garde etc.

*Touth.* E nous jugement desicum lees de gardein en fee par statut est disseisine, e vous poez avoir bon bref en le *post* disseisine. Ergo etc.

*J. Denham.* Cestui bref si est a la commune lei, e statut ne defet mie la commune ley; e si jeo ey deus remedies il me list a prendre a quel qe jeo voudray.

*Touth.* A la commune lei en fee taillé l'eir poet avoir le mortdancestre, e pur le inconvenient de ley fust ordiné le bref en le *descendre*. Auxi par de cea.

*Denham.* A la commune lei si averez vous bref d'entré par la ou baillif aliene en fee.

*Bereforde.* Jeo ay esté xv. anz icy. Jeo ne oy unkes tieu bref,

<sup>1</sup> ou R. <sup>2</sup> Om. pur . . . descendre M. <sup>3</sup> en M, P. <sup>4</sup> en M. <sup>5</sup> ley qe avaunt fut usee si fut P. <sup>6</sup> Ins. ne M, P. <sup>7</sup> ne lui est done recovers par assise M; qe meyntenaunt a lenfaunt deinz age si est done recoveryr par assise P.

<sup>8</sup> Ins. et M. <sup>9</sup> defet P. <sup>10</sup> Note from the margin of P. <sup>11</sup> Text from Y (f. 95d).



that of fee simple, [and] the words of the Statute do not abolish it, but give a special writ in the descender for the heir;<sup>1</sup> but think you that the mortdancestor lies now-a-days? Not so. No more does this writ where another is ordained for the case.

STANTON, J. [In amendment of the law aforetime used], a writ was ordained in this case for the heir, namely, the novel disseisin, because the guardian has nothing in the tenements enabling him to make any alienation which would prevent the infant, while still within age, from at once recovering by an assize without awaiting his full age. And if owing to the deaths of persons [there can be no assize], a writ of entry *sur* disseisin [is given]. And this ordinance accords with reason and the law of the land. So it seems that the old [remedy],<sup>2</sup> being found faulty, was abolished. Therefore this Court awards that you take nothing by your writ etc.

{At<sup>3</sup> common law he who took a feoffment from one who had a term or a wardship or [a tenancy] at will was not held a disseisor, nor was he who alienated a disseisor if he had a term etc.; so it is said. *Quære* however. But if a man who had nothing in my land and no possession came upon my land and made a charter of that land to B., and B. occupied the land under that charter, in that case by common law both were disseisors; and so they are still, for the feoffment makes a disseisin in this case. [See] T[rin.] 19 [Edw. II.]}

### III.

One A. brought a writ of entry against B. saying that he had no entry unless after the demise [made by] W., who in these tenements had nothing but a wardship.

*Toudeby.* We [pray] judgment, since by Statute a demise in fee by a guardian is a disseisin, and you can have a good writ [of entry *post disseisinam*].

*Denom.* This is a writ at common law, and the Statute does not defeat the common law; and if I have two remedies, it is lawful for me to betake myself to which I will.

*Toudeby.* At the common law the heir in fee tail could have the mortdancestor, and [to correct] this 'inconvenience' in law the writ in the descender was ordained by Statute. So here.

*Denom.* At the common law you shall have a writ of entry where a bailiff aliens in fee.

BEREFORD, C.J. I have been here fifteen years, and never heard

<sup>1</sup> For the heir in tail.  
in one of our books.

<sup>2</sup> Literally 'what was before.'

<sup>3</sup> A marginal note

e eusse jeo icy mes compaignons, jeo ne irrei de ci hui tanke vous eussez jugement encontre vous.

In crastino *Hervy*. Pur ceo qe vostre bref n'est acordant a la ley de terre, si agarde la court qe vous ne preignez rien etc., e B. adieu etc.

**Note from the Record.**

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 240d, Worcester.

Thomas Sampson of Northwyke, by William of Northwyke his attorney, demands against Adam de la Grene de Northwyke a messuage, three acres of meadow and a moiety of a virgate of land (except the third part of two parts of the same moiety) with the appurtenances in Northwyke<sup>1</sup> next Blockle, and against Agnes, wife that was of Philip de la Grene, one acre of meadow and the third part of two parts of a moiety of a virgate of land with the appurtenances in the same vill, as his right etc., and [as those] into which Adam and Agnes have no entry unless after the demise which Robert, son of Roger of Northwyke (who only had therein a wardship and while Sampson son of Henry, grandfather of Thomas, whose heir he is, was under age and in his [Robert's] wardship), made thereof to Richard de la Grene etc.

(Note continued on opposite page.)

**27. KNOVILLE v. PLUKENET.**

Cosinage, ou il dit qe la procheinté fust trié en baunke le Roy par enqueste, ou dit fust qe *diem clausit extremum* fust en lieu de mort-dauncestre.

Cosinage ou le tenant allege q'il fu trové plus prochein heir celi de qi mort etc. par verdit d'enqueste qe fut pris devant le Roi en un bref *diem clausit extremum* etc., et les demandants replierent et disoient qe cele enqueste ne fut fors enqueste de office, sur quel verdit jugement ne tailla sur nul recoverir vers nul certeyn persone, par quei etc.

**I<sup>2</sup>.**

Buges de Knoville, Piers le Breke et Maude sa femme, et Alice de Everyngham et Cecille lour parcenere porterent bref de cosynage vers Aleyn Pollockené,<sup>3</sup> et demaunderent<sup>4</sup> et counterent de la seisine un Johan Walronde.<sup>5</sup> De Johan, pur ceo q'il morust saunt heir etc., resorti a Cecille com a amyte etc. seore W. piere Johan. De Cecile descendit a Johan, Cecile<sup>6</sup> et Maude com a filles etc. De Johan

<sup>1</sup> Mod. Northwick, close to Blockley. <sup>2</sup> Text from A: compared with D, T. Head notes from A and D. <sup>3</sup> Pollocke D. <sup>4</sup> Ins. certeinz tenemenz T. <sup>5</sup> Warlonde T. <sup>6</sup> Oysell' D.

of such a writ. If I had my fellows [justices] here, I would not this day go hence until you had judgment against you.

On the morrow, STANTON, J. Because your writ is not accordant with the law of the land, the Court awards that you take nothing etc., and B. adieu etc.

**Note from the Record** (*continued*).

And Adam and Agnes, by Simon of Cranesle attorney of Agnes, come and defend [Thomas's] right when etc.; and they say that they ought not to answer him thereof to this writ; for they say that in the [or a] Statute of Edward [I.] published (*edito*) here in A.R. 13, it is contained<sup>1</sup> that in the case when anyone holding a tenement for term of years or in wardship alienates that tenement in fee and by that alienation transfers the freehold to the feoffee, let there be (*fiat*) a remedy by writ of novel disseisin etc., and if by reason of the death of persons the remedy by that writ comes to an end (*cessat*), let there be a remedy by writ of entry etc. and this writ ought to serve (*deservire*) Thomas in this case, if right he has; and thereof they pray judgment etc.

And Thomas cannot deny this. Therefore it is awarded that Adam and Agnes go thence without day, and that Thomas take nothing by this writ, but be in mercy for his false claim etc.

27. KNOVILLE *v.* PLUKENET.<sup>2</sup>

Cosinage by *A.* against *B.* on the death of *X.*, a tenant in chief. Can *B.* plead as an estoppel a judgment of the King's Bench ordering seisin to be given to *B.* as *X.*'s heir, he having been found heir by a jury on which *A.* and *B.* had put themselves in proceedings begun by *diem clausit extremum*?

The power of the King's Bench to entertain an action and take a verdict without the warrant of an original writ discussed.

I.

[Bogo de Knoville, Alice de Everingham, Maud le Brut, Peter de Helyon and Cecily his wife<sup>3</sup>] brought a writ of cosinage against Alan Plukenet and demanded certain tenements and counted on the seisin of John Walerand. From John, since he died without an heir [of his body, the fee] resorted to Cecily as aunt, sister of W. father of John. From her it descended to Joan, Cecily, and Maude as daughters.

<sup>1</sup> Stat. Westm. II. c. 25.

<sup>2</sup> This case is Fitz. *Estoppel*, 255.

<sup>3</sup> For the names see our Note from the Record.

descendit le fee et le demene de sa pourpertie et deveroit descendre a Buges com a fitz etc. ensemblement ove ces parceres etc.

*Toud.* Nous conissons bien qe J. W.<sup>1</sup> de qi etc. fust seisi et morust seisi; le quel J. tient ceaux tenemenz en chief de nostre seignour le Roy; issint qe après la mort J., le Roy seisi etc. touz ceaux tenemenz; par quel Aleyn del une part et lez aultres siwerent a la chauncelrie pur la seisine avoir dez avaunt ditz tenemenz com plus procheyn<sup>2</sup> heirs Johan de Walronde; issint qe pur debat et despenses des enquestes a la chauncelrie retornez par bref *diem clausit extremum*, si furent il ajournez devaunt le Roy; ou dit fust par la court q'il moustrassent lour resouns d'une part et d'autre coment il furent heir<sup>3</sup> Johan de Walronde; et sic fecerunt; par quei sur debat de la procheynté se<sup>4</sup> mistrent en<sup>5</sup> pays; par quel enqueste trové fust qe cesti Aleyn fust plus proscheyn heir Johan etc.; par quei fust agardé qe Buges et les aultres ne preissent rien et qe la seisine fust lyveré a Aleyn com a celui qe fust plus proscheyn heir Johan. Et demaundoms jugement, desicome c'est un bref qe ne se estent fors a tryer la procheyneté qaunt a la possessioun, la quele fust aultrefoitz trové par enqueste ou il se mistrent avaunt le Roy en court qe porte recorde, sur verdit de quele enqueste jugement est<sup>6</sup> doné, que unqore esta en sa force, a qi vous fustes partie et assentistes, jugement si a cesti bref devez estre respondus.<sup>7</sup>

*Herle.* Et nous jugement, desicome vous avez conu la seisine nostre auncestre, et le recoverir qe vous aleggez sur verdit d'enqueste ne fust sy noun auxi come un enqueste d'office sauntz procès de ley, pur ceo q'il n'avoit point de original ne la partie somouns etc., ne le jugement ne tailla qe l'un recovereist vers l'autre, et nous sumes ore a nostre recoverir qe doné nous est par bref a la comune ley et en<sup>8</sup> la comune place, si par jugement qe se fist sur verdit d'enqueste prise de office saunz procès de ley nous pusset de cesti bref ouster.

*Fris.* Donques grauntez bien le procès estre tiele cum nous avoms dit.

*Herle.* A conustre choce qe ne deit estre barre par ley jeo n'ay mye mestier etc., qe *posito*<sup>9</sup> qe jeo vousisse dedire le recorde et la court veot<sup>10</sup> qe le record n'est mye tiel par quei jeo doy estre ousté de cesti bref, il n'y avereit aultre choce fors dit<sup>11</sup> a la partie q'il deist outre. Par quei jeo n'ay mye mestier a graunter ne a dedire, eo qe ceo n'est<sup>12</sup> mye fyn de plee.

<sup>1</sup> Johan Walronde D.    <sup>2</sup> procheyns D.    <sup>3</sup> heirs D.    <sup>4</sup> si D.    <sup>5</sup> al D.  
<sup>6</sup> Om. est D.    <sup>7</sup> bref devez r' A; devoms r' T; devetz estre respondu D.  
<sup>8</sup> a D.    <sup>9</sup> mettez T.    <sup>10</sup> veit T; veist D.    <sup>11</sup> Corr. dire (?).    <sup>12</sup> dedire ceo qe nest T.



From Joan the fee and demesne of her share descended and ought to descend to Bogo, as son etc. together with his parceners etc.

*Toudeby.* We freely confess the J. W[alerand] of whose etc. was seised and died seised; and he held these tenements in chief of the King; so that after his death the King seized all these tenements; and therefore Alan of the one part and [the demandants of the other] sued to the Chancery to have seisin of the tenements as next heirs of John; and because of the contrariety<sup>1</sup> in the inquests returned to the Chancery by writ of *diem clausit extremum*, they were adjourned [into the King's Bench]; and there they were told by the Court to show their reasons on one side and the other for claiming to be next heir; and so they did; and then, because of the dispute as to proximity, they put themselves upon the country; and by the inquest it was found that Alan was the next heir of John etc.; and therefore it was awarded that Bogo and the others should take nothing, and that the seisin should be delivered to Alan, as to him who was John's next heir. And since this is a writ which only extends to trying the proximity so far as possession is concerned, and that has already been found by an inquest on which they put themselves before the King in a court that bears record, and a judgment was given on that record, which [judgment] still stands in force, and to it [they] were parties and assented, we pray judgment whether [they] ought to be answered to this writ.

*Herle.* And we pray judgment, since you have confessed our ancestor's seisin, and the recovery which you allege upon the verdict of an inquest was only as it were on an inquest of office without process of law, for there was no original [writ] or summons of the parties, and no judgment was formulated that the one should recover against the other, and we are now seeking the recovery which is given us by writ at the common law and in the Common Place—so we pray judgment whether you can oust us from this writ by a judgment made upon a verdict of an inquest taken *ex officio* without process of law.

*Friskenev.* Then confess that the process was such as we have said.

*Herle.* I have no need to confess a matter which cannot be a bar by law. Put case that I wished to deny the record, and the Court said that the record was not such as ought to oust me from this writ, the Court could do nothing but tell [me] to plead over. So I have no need to confess or deny [the record], for that could not be the end of the [pleadings].

<sup>1</sup> We take *despenses* to be a mistake.

*West.* Ceo qe nous aleggoms pur<sup>1</sup> faire nient responsable a cesti bref si chiet en ley. Par quei si la court veot<sup>2</sup> qe le recoverir soit barre, ne covient il qe vous grauntez ou dediez?

*Hunt.* Il ne nous covient point etc., q'il n'est pas barre; qe si nous portassoms une atteynte ou certificacioun etc. nous ne serrioms pas eidé, qe l'enqueste qe passa ne fust fors enqueste d'office sauntz procès de ley, et par quei<sup>3</sup> nous n'avoms pas mestier a conustre etc.

*Pass. ad idem.* Jeo pose qe Aleyn eust porté soun bref de cosinage devaunt le Roy et eust recovery par jugement etc., par taunt ne nous oustereyt il mye de nostre bref issint a la comune ley qe nous ne serroms r[espondu]. Par molt plus fort par nul jugement qe se fist sur verdit d'enqueste sauntz original et sauntz procès de ley ne devoms estre barrez etc.

*Berr.* Nous n'averoms<sup>4</sup> poer issint<sup>5</sup> a conustre ceo plee sauntz garraunt; et cely qi nous doune garraunt il lour pout doner garraunt. Mez ore voleit le Roy qe la fust la chose deduit<sup>6</sup> ou lez parties se mistrent,<sup>7</sup> sur qei jugement se fist. Par quei etc.

*Spig.* Nous avoms vew qe le bref *diem clausit extremum* si ad esté porté en lieu de mortdauncestre.

## II.<sup>8</sup>

Rogier de Bohun et Alice de Cumham, Maud le Blount,<sup>9</sup> Pere de Henleton et Sarre sa femme porteront bref vers Aleyn Plukete,<sup>10</sup> de la seisine un J[ohan] Walrond.<sup>11</sup>

*Scrop.* Nous conissons bien la seisine Johan Waler[aund], de qi seisine vous demaunde, qe fut ydiot tote sa vie, par r[esoun] de quele ydionerie<sup>12</sup> le Roy avoit sa terre tute la vie Johan; après qi mort nous suymes bref hors de la chauncelerie al eschetour,<sup>13</sup> scilicet *diem clausit extremum*, d'enquere des queux terres etc. et qe fut plus prochain heir. Et eux auxi. De queux enquestes les uns chaunterent pur nous et les autres pur eux. Dont sour le retourn des enquestes entre nous fut debat<sup>14</sup> en la chauncelerie.<sup>15</sup> Par qei nous fumes ajornez devaunt le Roi, ou la court nous dit qe nous moustrames<sup>16</sup> nos resouns<sup>17</sup> de une partie et d'autre coment nous clamoms estre

<sup>1</sup> *Ins.* vous *D.*    <sup>2</sup> voet *T.*    <sup>3</sup> consequens *D.*, *T.*    <sup>4</sup> naverioms my *D.*  
<sup>5</sup> yci *D.*    <sup>6</sup> dedite *D.*    <sup>7</sup> demistrent *D.*    <sup>8</sup> Text from *M.*; compared with *P.*, *B.*  
<sup>9</sup> Henri de Bon, Alice de E., Maude de Clentone *P.*; Rogier de Boytone, Alice de B., Mahaude de B. *B.*    <sup>10</sup> Alice Plukenet *B.*    <sup>11</sup> *Om.* de . . . Walrounde *M.*; *ins.* *P.*; *add* ut per pedem greci perpenditur *B.*    <sup>12</sup> ydyor' *P.*; ydiote *B.*    <sup>13</sup> evesqe *M.*; eschetour *B.*    <sup>14</sup> retourn de vic' enquest' *M.*    *Text* from *P.*    <sup>15</sup> *Ins.* sour cel fut entre *M.*    <sup>16</sup> moustrassoms *B.*    <sup>17</sup> *Om.* nos resouns *M.*

*Westcote.* What we allege to show that you should not be answered to this writ is matter of law. So if the Court holds that the recovery would be a bar, ought you not to confess or deny it?

*Huntingdon.* It does not behove us [to do that], for it is not a bar; for if we brought an attainr or a certification we should not get any good thereby, for the inquest which passed was but an inquest of office without process of law; and consequently we have no need to confess [or deny it].

*Passeley* on the same side. I put case that Alan brought his writ of cosinage [in the King's Bench] and recovered by judgment, he would not thereby oust us from being entitled to an answer to our writ here at the common law. And *a multo fortiori* ought we not to be barred by a judgment made upon the verdict of an inquest of office without original and without process of law.

BEREFORD, C.J. We here<sup>1</sup> should have no power to take cognisance of this plea without a warrant; and he who gives us a warrant could give them a warrant. But it was the King's will that the matter should be dealt with where the parties had put themselves upon a verdict, and thereupon judgment was made. Therefore etc.

SPIGURNEL, J. We have seen the writ of *diem clausit extremum* brought in lieu of a mortdancestor.

## II.<sup>2</sup>

[Bogo de Knoville, Alice de Everingham, Maud le Brut, Peter de Helyon and Cecily his wife]<sup>3</sup> brought a writ against Alan Plunkenet on the seisin of John Walerand.<sup>4</sup>

*Scrope.* We freely confess the seisin of John Walerand, on whose seisin you demand; and he was an idiot all his life, and, because of his idiocy, the King had his land all his life; and after his death we sued a writ out of the Chancery to the escheator, namely the *diem clausit extremum*, to inquire of what lands etc. and who was next heir. And [the demandants] did the like. And some of the inquests chanted for us and others for them. Then on the return of the inquests there was a debate between us in the Chancery. Therefore we were adjourned [into the King's Bench], and there the Court told us to show our reasons on both sides for claiming to be John's heirs.

<sup>1</sup> That is, in the Court of Common Pleas.

<sup>2</sup> This version appears in the Old Edition, p. 84.

<sup>3</sup> For the names see our Note from the Record.

<sup>4</sup> One of our books adds *ut per pedem greci perpenditur*. This seems to mean 'as appears—or, as is learnt from—the pedigree.' The scribe seems to have believed that the obscure word 'pedigree' meant the Greek's foot.

heir le dit J[ohan]; ou eux fessent lour resorte et disseint a tiels<sup>1</sup> cum ore fount<sup>2</sup>; et nous deymes qe J[ohan] avoit un comune auncestre W. Waler[aund], de qi etc.,<sup>3</sup> qe avoit issue Robert, William et Alice; Robert morust sanz heir; W[illiam] avoit ij. fitz, Robert et Johan, de qi seisine etc.; Robert morust sanz heir etc.; de Johan pur ceo qil morust etc. resorti etc. a Alice com a aunte etc. soer W[illiam] pere<sup>4</sup> Johan; de Alice descendit a Aleyn com a fitz vers qy cesti bref etc.<sup>5</sup>; ou eux meyntyndrent lour resort et lour descence, et disseint qe Alice, de qi nous fessoms nostre resort, fut noneyne et professe etc. sanz heir etc.; et nous dioms<sup>6</sup> qe ele<sup>7</sup> ne avoit<sup>8</sup> nul tiel<sup>9</sup> issu de W[illiam] le comune auncestre a qi eux fesoient<sup>10</sup> lour resort et qe Alice avoit issue auxi com avaunt fut dit<sup>11</sup>; et de ceo meismes en enqueste; par quele enqueste fut trové nostre resort et nostre descence et q'il n'y avoit nul Cecilie<sup>12</sup> a qi etc., et qe nous sumes<sup>13</sup> plus procheyn heir Johan Waler[and], de qi seisine etc.; par qe agardé fut qe la seisine fut a nous livré com a plus prochain heir, et qe Rogier et les autres rien ne<sup>14</sup> preissent par lour bref; dont nous demaundoms jugement deus qe cesti bref de cosinage n'est mès<sup>15</sup> a trier le procheineté<sup>16</sup> de sange ou la seisine le cosin est conu<sup>17</sup> etc., la quele procheineté est<sup>18</sup> trié par enqueste en la court le Roy, en la quele eux se mistrent, et par la quele est trové qe nous fumes<sup>19</sup> plus prochain heir; et demaundoms jugement etc.<sup>20</sup> si ore pussez demaunder.

Et<sup>21</sup> fut amendé par *Toud.* 'si a cesti bref de possessioun devez estre r[espondu], mès si la court le agarde<sup>22</sup> nous r[espondroms] assez.'<sup>23</sup>

Et hoc quia<sup>24</sup> *Herle* recitavit ut supra in crastino rien poussez demaunder. Unde *Herle* non habuit recordum. Rien demaunder suppose excludi ab actione imperpetuum.

Unde<sup>25</sup> *Scrop* illam conclusionem assumpsit: hoc non supponit, ideo<sup>26</sup> non sequitur, set alia conclusio bene<sup>27</sup> sequitur ex premissis.

*Herle.* Seez<sup>28</sup> avowé.

*Spig.* N'est pas mestier d'estre avowé sour excepcioun de ley qe chiet en<sup>29</sup> jugement de court auxi cum sour un excepcioun qe chiet en fet.<sup>30</sup>

<sup>1</sup> a un tel P; a cel temps B. *Corr.* autiel. <sup>2</sup> sont M; fount P, B. <sup>3</sup> Om. de qi etc. P. <sup>4</sup> mere B. <sup>5</sup> fitz de Aleyn qore est com a fitz M. <sup>6</sup> deymes P, B. <sup>7</sup> qil P. <sup>8</sup> qil ny avoit B. <sup>9</sup> *Ins.* Cecille B. <sup>10</sup> Om. eux fesoient M; *ins.* P. <sup>11</sup> Om. et . . . dit P. <sup>12</sup> tel P. <sup>13</sup> fumes B. <sup>14</sup> Om. ne B. <sup>15</sup> ne sert de autre rien si noun P. <sup>16</sup> prochain M, B. <sup>17</sup> tenu M. <sup>18</sup> fut autrefois P. <sup>19</sup> sumes P, B. <sup>20</sup> Om. et . . . etc. B. <sup>21</sup> Om. this paragraph M. <sup>22</sup> enveie B. <sup>23</sup> Om. next two sentences P. <sup>24</sup> Om. Et hoc quia M. <sup>25</sup> Om. Unde M. <sup>26</sup> Om. ideo B. <sup>27</sup> unde M. <sup>28</sup> Soit B. <sup>29</sup> qe cest M. <sup>30</sup> Om. en fet M.



They then made their resort and said what they now say ; and we said that John had a common ancestor, W. Walerand, from whom etc., who had issue Robert, William, and Alice ; Robert died without heir [of his body] ; William had two sons, Robert and John, of whose seisin etc. ; Robert died without heir etc. ; and from John, because he died etc. [the fee] resorted to Alice as aunt etc., sister of William, father of John ; from Alice it descended to Alan as son, [and from him to Alan] (against whom this writ is brought) as son. They maintained their resort and descent, and said that Alice, [to] whom we made our resort, was a nun professed [and died] without heir etc. We said that there was no such issue of William, the common ancestor, [as the Cecily] to whom they made their resort, and that Alice had issue as aforesaid. Of this we put ourselves on an inquest ; and by the inquest our resort and our descent were found, and that there was no Cecily to whom etc., and that we are next heir of John Walerand, of whose seisin etc. Therefore it was awarded that the seisin should be delivered to us as to the next heir, and that [Bogo] and the others should take nothing by their writ. So we demand judgment since, where the seisin of the cousin is admitted, this writ of cosinage serves only to try the proximity of blood, and that proximity has been tried in the King's Court by inquest, on which they put themselves, and thereby it was found that we were next heir : judgment whether now [they] can demand anything.

And *Toudeby* amended this [by saying] : ‘ whether to this writ of possession [they] should be answered, but if the Court awards we will say enough.’<sup>1</sup>

And<sup>2</sup> this he did because *Herle*, when he was rehearsing on the next day, said, ‘ cannot claim anything.’ But *Herle* had no record [of these words]. ‘ Cannot claim anything ’ supposes a perpetual exclusion from the action. Then *Scrope*<sup>3</sup> assumed that conclusion : it does not suppose it, so there is a *non sequitur* ; but the other conclusion does well follow from the premisses.

*Herle*. Get yourselves avowed.

SPIGURNEL, J. There is no need to be avowed upon a plea which is matter of law and concludes to the judgment of the Court, as there is upon a plea of fact.

<sup>1</sup> *Toudeby* would make the plea a plea in abatement of the writ, not a plea in bar of the action.

<sup>2</sup> This passage is not given by all our books, and translation of it is not easy.

<sup>3</sup> *Scrope* apparently adopts *Toudeby*'s suggestion, and admits that he had given his plea an illogical conclusion.

*West.* Nous<sup>1</sup> avoms avowé<sup>2</sup> en la manere etc.

*Ber.* Nous entendoms la manere; si ele ne suffit etc. vous volez respondre.<sup>3</sup>

*Toud.*<sup>4</sup> Volunters.

Et fut avowé.

*Den.* Ore demaundoms jugement de le hure qe la seisine nostre cosyn est conu,<sup>5</sup> et nostre resort a ore n'est pas dedit, einz se dient<sup>6</sup> avoir estat par un enqueste qe se fit entre nous et R., en la quele nous meimes a<sup>7</sup> lour dit, ou<sup>8</sup> il ne dient qe cel enqueste se fit par bref original ne nous sumes<sup>9</sup> a r[espondre] a eux par procès de ley de terre, einz allegent lour tenaunce par verdit d'enqueste, qe sanz procès ne deit estre dit fors qe enqueste de office; jugement et prioms seisine etc.

*Pass.*<sup>10</sup> De comune ley les comons plets doivent estre tenu en certain lieu, com ceinz,<sup>11</sup> par bref original; ergo ceo q'est fet aillours est<sup>12</sup> de office etc.<sup>13</sup>

*Herlep.*<sup>14</sup> Estre ceo homme ne put pas sour cel enqueste avoir atteint ne certificacioun. Dount il semble qe ceo n'est autre qe enqueste de office.

*Toud.* Dont sumes en un qe il y avoit tiel enqueste.

*Herle.* Il n'est pas a moy a r[espondre] a ceo qe n'est pas<sup>15</sup> obstacle, qe si homme allege vers moy com barre<sup>16</sup> ceo qe n'est pas barre, la court ne me chacera pas a conustre etc. Estre ceo tut eussez vous ceinz a vostre suyte record de<sup>17</sup> vostre dit, vous ne me barrez pas par cele processe etc.; dont il n'est pas mestier a graunter.

*West.* Tournez ore areremayn. Primes deit homme graunter q'il plede<sup>18</sup> a la voidaunce; qe autrement après pleder a la voidaunce, qe suppose avoir graunté le fet qe homme voille voider, si homme ne le put voider par ley, homme le put dedire.<sup>19</sup> Dont ensuerait qe primes grauntereit et pus dediereit.<sup>20</sup>

{ *Herle.*<sup>21</sup> Vous dites qe vous recoverastes par jugement entre etc.

*Toud.* La seisine livré par agard.

*Herle.* Si agardé fuist par enqueste d'office non nocebit.

*Ber.* Si cel jugement fuist rendu nous ne le defroms pas. }

<sup>1</sup> *Ins.* le B.    <sup>2</sup> oye M; dit P; avowe B.    <sup>3</sup> Nous avoms entendu la manere qe a ceo ne suffyt vous r' assez P.    <sup>4</sup> *Ins.* Sire B.    <sup>5</sup> trouve P; graunte B.    <sup>6</sup> deyvent M.    <sup>7</sup> Om. a M.    <sup>8</sup> et P.    <sup>9</sup> som' [= somouns] B.    <sup>10</sup> *Ins.* ad idem P.    <sup>11</sup> lieu en counteez B.    <sup>12</sup> *Ins.* fait B.    <sup>13</sup> *Ins.* et nyent plee par quoi partie deive estre reboute B.    <sup>14</sup> Om. Herlep. B.    <sup>15</sup> *Ins.* a moy B.    <sup>16</sup> baroun M.    <sup>17</sup> vous recoveri a B.    <sup>18</sup> graunter et puyz pleder P; graunter qe pleder B.    <sup>19</sup> il le dedirra B.    <sup>20</sup> dedirreyt P; dedirra B.    <sup>21</sup> This passage only in B.

*Westcote.* We have [been] avowed in a manner.<sup>1</sup>

BEREFORD, C.J. We understand your 'in a manner.' If [your plea] proves insufficient, you want to answer [over].

*Toudeby.* Well, we will be avowed.<sup>2</sup>

He was avowed.

*Denom.* Now we pray judgment. The seisin of our cousin is confessed,<sup>3</sup> and our resort is not now denied, but they say that they have estate by an inquest made between us and [them], on which we placed ourselves, so they say; but they do not say that this inquest was taken by original [writ] or that we were [summoned] to answer to them by process of the law of the land; and they allege their tenancy by verdict of an inquest, which, being without process, can only be called an inquest of office. So judgment, and we pray seisin.

*Passeley.* By common law common pleas should be held 'in loco certo' as here,<sup>4</sup> by original writ. Therefore what is done elsewhere is done of office.

*Hartlepool.*<sup>5</sup> Moreover on such an inquest one cannot have attain or certification. So it seems to be only an inquest of office.

*Toudeby.* Then we are agreed that there was such an inquest.

*Herle.* I have not got to answer to what is not an obstacle. If a man alleges against me as a bar what is not a bar, the Court will not drive me to confess [or deny it]. Besides, if you had here a record [of your recovery], according to your words you would not bar me by this process. So there is no need to confess it.

*Westcote.* Now turn back. A man must first confess before he avoids; for otherwise, after pleading in avoidance—which supposes a confession of the fact to be avoided—a man, being unable to avoid it by law, might deny it. And so he would first grant and then deny.

{ *Herle.*<sup>6</sup> You say that you recovered by judgment between [us].

*Toudeby.* The seisin was delivered by award.

*Herle.* If it was awarded on an inquest of office, it will not hurt us.

BEREFORD, C.J. If this judgment was rendered, we will not undo it.}

<sup>1</sup> But see the variants.

<sup>2</sup> Or perhaps Toudeby's remark means 'Yes, that is so.'

<sup>3</sup> Or 'found.'

<sup>4</sup> In this court of Common Pleas.

<sup>5</sup> Or perhaps Passeley continues.

<sup>6</sup> This passage is found in one only of our books.

*Herle.* Nent plus barra nous l'agarde sour cele enqueste qe si ly fut sour enqueste pris en court de baroun eo quod sine brevi.

*Ber.* Celi en qi court l'enqueste fut pris est plus<sup>1</sup> qe chief seignour qe il est chief seignour et Roy. Et veez donqe si le Roy puise<sup>2</sup> estre en lieu de bref en sa court devaunt ly mesme.<sup>3</sup>

*Denom.* Si Peres Heldone<sup>4</sup> se mist en enqueste<sup>5</sup> ne se tournereit il<sup>6</sup> a sa femme en nul<sup>7</sup> prejudice ?

*Herle*<sup>8</sup> lui dit q'il se deust<sup>9</sup> quia per istam rationem concederet<sup>10</sup> inquisitionem quam nitebatur non esse necesse concedere.<sup>11</sup>

*Rothele.*<sup>12</sup> Devaunt le Roy tout sanz bref si fut trié le reoume<sup>13</sup> de Escoc.

*Herle.*<sup>14</sup> Ne sount pas semblables qe la fut la descente graunté de ambes partes. Sic non hic.

*Ber.* Si vous eussiez tue<sup>15</sup> gaunt vous<sup>16</sup> meistes en cele enqueste, vous ne eussiez esté barré, qe adonqe ne estut esté qe de office.<sup>17</sup> Estre ceo si nous eussoms pris cel enqueste sanz bref, ceo eust esté sanz garraunt, mès del hure qe ceo fut pris devaunt le Roy, ceo<sup>18</sup> ne put homme pas dire qe ceo fut sanz garraunt.

*Spig.* dit a *Kyng.* Ne veistes vous et conuseistes les persones<sup>19</sup> ou par countrepleder et mise de parties le *diem clausit* etc. fut en lieu de mortdauncestre etc ?<sup>20</sup>

Et sic adiornantur.<sup>21</sup>

### III.<sup>22</sup>

Parceners porterent un bref de cosinage vers Alayn Plukeneyt de la mort J. Wardone.

*Westcote.* Nous conusoms bien qe Jon morust seisi. Après sa mort nostre seignour le Roi, pur ceo qe les tenemenz furent tenuz de ly en chef, entra ; par qey nous seumes le *diem clausit extremum* et fumes ajornés hors de la chauncellerie pur debat qe i avoit entre<sup>23</sup> nous devaunt le Roi mesmes ; et mesmes ceux adonqe clamerent estre procheyns heirs a J. Et la court dit qe nous moustrames coment nous fumes heirs. Et nous mostrames, et il nous contrarient. Par quey enqueste se joynt entre nous ; qe passa pur nous qe nous

<sup>1</sup> *Ins.* haut *P.*    <sup>2</sup> pussez *M* ; puise *P.*    <sup>3</sup> *B* gives this speech in a corrupt form and marks it for omission.    <sup>4</sup> de *H. P.*    <sup>5</sup> enqueste ceo *B.*    <sup>6</sup> *Om.* il *B.*    <sup>7</sup> *Om.* nul *B.*    <sup>8</sup> *Om.* speech *P.*    <sup>9</sup> qil nensiwit pas *B* ; qil se teust *Conj.*    <sup>10</sup> consideret *M* ; concedent *B.*    <sup>11</sup> contendere *M* ; concedere *B.*    <sup>12</sup> Rochele *M, P* ; Rothele *B.*    <sup>13</sup> tut le reaume *P.*    <sup>14</sup> *Om.* speech *P.*    <sup>15</sup> tu *P.*    <sup>16</sup> *Ins.* vous *B.*    <sup>17</sup> estut ele fors de office *P* ; neust ele este mesqe doffice *B.*    <sup>18</sup> Roi sanz bref *B.*    <sup>19</sup> *Spig.* Nous avoms veu et conu le proces *P* ; *Spig.* Ne veistes vous et constr' les persones *B.*    <sup>20</sup> et sic pour iurata *B.*    <sup>21</sup> *Om.* sentence *M.*    <sup>22</sup> Text from *R.*    <sup>23</sup> en *R.*



*Herle.* The award upon this inquest will not bar us any more than if it were the award of a court baron, for it was without writ.

BEREFORD, C.J. He in whose court this inquest was taken is more than a chief lord : he is chief lord and King. And consider whether the King in his court, before himself cannot serve instead of a writ.

*Denom.* If Peter [de Helyon] put himself upon an inquest, that would in no wise prejudice his wife.

*Herle* advised him [to hold his tongue],<sup>1</sup> for by that argument he would be admitting the [taking of an] inquest, which there was no need to admit.

*Rotheley.*<sup>2</sup> The [right to the] kingdom of Scotland was tried before the King without any writ.

*Herle.* Not a similar case, for there the descent was admitted by both parties, and here it is not.

BEREFORD, C.J. If you had held your tongue when you put yourself on this inquest, you would not have been barred, for then it would only have been *ex officio*. Moreover, if we<sup>3</sup> had taken this inquest without writ, that would have been without warrant ; but it cannot be said here that there was no warrant, since the inquest was taken before the King.

SPIGURNEL, J., to *Kingeshemed*. Did not you see, and did not you know the parties<sup>4</sup> to, a case in which by counterpleading and submission [to an inquest] the *diem clausit* was used as a mortdancestors ?

And so they are adjourned.

### III.

Parceners brought a writ of cosinage against Alan Plukenet on the death of J. [Walerand].

*Westcote.* We confess that John died seised. After his death the King entered because the tenements were held of him in chief. So we sued the *diem clausit extremum* and were adjourned out of the Chancery into the King's Bench because of the debate that there was between us ; and the present demandants then claimed to be John's next heirs. The Court told us to show how we were heirs. We showed it, and they countered us. So an inquest was joined between us. It passed for us [saying that] we were next heir. So judgment

<sup>1</sup> This is a conjecture. The text seems corrupt. famous *Processus Regni Scotiæ*.

<sup>2</sup> Possibly Roubury, a justice of the King's Bench. The allusion is to the

<sup>3</sup> In the Court of Common Pleas.

<sup>4</sup> Somewhat uncertain.

fumes procheyn heir ; si qe agarde se fit q'il ne pristerent rien etc. et qe la seisine fut livré a nous comme a procheyn heir. Et desieum cesti bref de possessioun ne sert d'autre rienz en cas ou la possessioun est conu forsqe a trier la proscheinté de sanke, dount demaundoms jugement si a cesti bref de possessioun devet estre r[espondu].

*Herle.* C'est a l'actioun.

*West.* Nous le tenoms al bref.

*Berr.* Si vous devet<sup>1</sup> vostre exceptioun en autre manere q'ele est recevable, il covient qe la court vous departe,<sup>2</sup> e qe ele seit r[eceu] en la manere com ele seit receivable.

*Hervi.* Ceo q'il ount dit la court l'ad bien entendu, qe lour entente est qe, s'il pussent avoir lour dit, il vous voilent estraunger de cesti bref de possessioun.

*Denum.* Vous veet bien coment il nous<sup>3</sup> veilent oster de nostre bref de possessioun par mi un procès et un jugement qe se<sup>4</sup> fist en la court le Roy sur verdit d'enqueste, ou nous mesmes, a ceo q'il dient, sumes partie. Et il ne unt mye assigné qe bref original fut porté ne la partie somouns a r[espondre]. Par quey la court ne pout par comune ley jugement sur cel procès fere. Et nous sumes icy en court a la comune ley, et avoms porté bref a la comune ley, a quel bref il est somouns a r[espondre] a nous ; et rienz ne dient de nous estraunger, et ad graunté la seisine nostre auncestre ; et demaundoms jugement.

*Malm.* Dount sumes nous a un qe<sup>5</sup> tiel jugement se<sup>6</sup> fit. Mès vous dites qe tiel jugement ne vaut nent.

*Hunt.* Tut passa le jugement en la manere sur tiel verdit d'une faux enqueste, nous n'averoms mie l'ataynte, ne la certificacioun. Par qey nous entendoms qe le jugement qe se fit ne fut qe de office, et ne lye mye forqe<sup>7</sup> en lay issint q'il nous pussent estraunger.

*Malm.* Dount grauntet vous le jugement.

*Herle.* Si nous dedeysoms le jugement, et trové fut par record qe le jugement fut tiel, et la cour veut qe le jugement ne seit mye si fort en ley q'il nous barre de nostre bref de possessioun, la court ne irreit mye a jugement pur vous. Par qey nous devons primes pleder en ley si tiel jugement nous deit oster de nostre bref.

*Westcote.* Si nous pledoms en ley etc., et nous pussoms mostrer par nous r[esoun]<sup>8</sup> qe tiel jugement vous purra oster de vostre bref, jeo ne cray mie qe vous serriez après receu a dedire le jugement.

<sup>1</sup> *Corr.* donet (?). <sup>2</sup> *depte with barred p, P.* <sup>3</sup> vous *R.* <sup>4</sup> su *R.* <sup>5</sup> a *R.*  
<sup>6</sup> si *R.* <sup>7</sup> *Om.* forqe *Conj.* <sup>8</sup> par nos resouns (?).

was made that they took nothing, and that the seisin should be delivered to us as next heir. And since this possessory writ serves to no purpose, when the possession is confessed, but to try the proximity of blood, we pray judgment whether they should be answered to this possessory writ.

*Herle.* Your plea is to the action.

*Westcote.* We plead it to the writ.

BEREFORD, C.J. If you plead it in a manner in which it is not receivable, the Court must [correct] you, and it will be received in the manner in which it is receivable.

STANTON, J. The Court has well understood what they say. They mean that, if they could have their way, they would estrange you from this possessory writ.

*Denom.* You see how they wish to oust us from our possessory writ by means of a process and judgment made in the King's court upon verdict of an inquest, to which we, so they say, are party. And they have not said that an original writ was brought or that the party was summoned to answer. So by the common law the Court could make no judgment upon this process. And here in this court we are at common law, and have brought our writ at common law, and to that writ he is summoned to answer us. And they say nothing to estrange us and have admitted our ancestor's seisin. So we pray judgment.

*Malberthorpe.* Then we are agreed that such a judgment was made; and you say that such a judgment is worth nothing.

*Huntingdon.* If a judgment of this kind were given upon the verdict of a false inquest, we should not have attainr or certification. So we think that the judgment that was made was only *ex officio* and not<sup>1</sup> binding in law so that they can estrange us.

*Malberthorpe.* Then you admit the judgment.

*Herle.* If we denied the judgment, and it was found by record that there was such judgment, and the Court [saw] that the judgment was not so strong in law as to bar us from our possessory writ, the Court would not go to judgment for you. Therefore we ought first to plead on the point of law whether such a judgment should oust us from our writ.

*Westcote.* If we pleaded on the point of law and could prove by our arguments that such a judgment would oust you from your writ, I do not believe that after that you would be received to deny the judgment.

<sup>1</sup> See the text, which we conjecturally amend.

*Herle.* Si serray, et ceo est ordre de pleder.

*Pass.* Tot ceo procès q'il allege ne sert a autre chose forqe a vere a qy la primere seisine deit estre liveré hors de la mayn le Roy après la mort son tenaunt. A la feze avent qe la <sup>1</sup> primere seisine est liveré a cely qe nul droit ad, et ceo est pour la dreyne possessioun, qe fut par cas torcenouse; et sy n'est mye celi qe droit ad par taunt barré de son droit. Par qey il nous est avis qe par nul jugement q'il ount allegé par tiel procès devoms estre osté de nostre original q'est a la comune ley.

*Berr.* Vostre r[esoun] lie en cas ou il n'y ad forqe une partie qe seut.

*Herle.* Qaunt le Roi doune seisine en tiel cas il le doune sauve chescun droit. Par qey il n'est en ceo cas d'autre conditioun qe n'est un autre chefe seignour.

*Berr.* Le Roi ad l'estat de chef seignour et plus haut par sa prerogative. Et jeo ne quide mye qe ceste court avera pouer a trier ceo play sanz le bref le Roi ou il serreit testmoiné. Par qei ne put il estre garaunt a plai tenir en leu de bref?

*Pass.* Le Roi ad fet ces lues a <sup>2</sup> la ley veut qe les comunes lays <sup>3</sup> seient pledés en ceste court. Par qey par nul jugement fet hors de court de la comune place ne put il nous estraunger.

*Berr.* Poums nous defere ceo qe fut fet devaunt le Roi (*quasi diceret non*)?

*Herle.* L'agarde ne put mie estre tiel solom ley de terre par tiel procès.

*Spigurnel* dit q'il avoit veu le *diem clausit extremum* entre certeynz persones par le countrepleder de partie estre en leu de mordauncestre etc.

#### IV.<sup>4</sup>

Peres de C. e Cecile sa femme, Buges de Knolle, Alice de Hervingham, Maud le Bret demandent vers Alein Plokenete le manoir de K. ove les appurtenances; e disoient qe un Johan Walronde lour eosin morust seisi de ceux tenemenz en soun demene com de fee. De Johan resorti le fee e le demene a Cecile com a aunte e heir, soer William pere Johan; de Cecile a Johane, Alice e Cecile com iij. filles e un heir; de Jone descendi le droit de sa purpartie a Boges com a fille <sup>5</sup> e heir q'ore demande ensemblement ove P. A. M. e C.; de

<sup>1</sup> ca R.

<sup>2</sup> Corr. et (?).

<sup>3</sup> Corr. plaits (?).

<sup>4</sup> Text from Y (f. 59b.)

<sup>5</sup> Corr. fitz.



*Herle.* Yes I should, and that is the order of pleading.

*Passeley.* All this process which he alleges serves no purpose but to show to whom the primer seisin should be delivered out of the King's hand on his tenant's death. It sometimes happens that the primer seisin is delivered to one who has no right; and that is so because of the last possession, which perchance was tortious; and therefore the person who has right is not thereby barred of his right. So we are of opinion that we cannot be ousted from our original [writ], which lies at common law, by any judgment that they have alleged upon such a process [as aforesaid].

BEREFORD, C.J. Your reasoning would hold in a case in which only one party sued [a livery].

*Herle.* When the King gives seisin in such a case, he gives it with a salvo for every right. So in such a case his position is only that of any other chief lord.

BEREFORD, C.J. The King is in the chief lord's position, but is higher by his prerogative. I do not think that this Court would have power to try this plea without the King's writ in which [that power] is witnessed. [But] why should not he himself in lieu of a writ warrant the holding of a plea?

*Passeley.* The King has appointed [divers] places, and the law is that common pleas be pleaded in this Court. So he cannot estrange us by any judgment made outside the court of the Common Place.

BEREFORD, C.J. Can we undo what was done before the King? Not so.

*Herle.* By the law of the land there cannot be such an award on such a process.

SPIGURNEL, J., said that he had seen the *diem clausit extremum* used between certain persons in lieu of a mortdancestor by means of counterpleading.

#### IV.

[Peter of Helyon and Cecily his wife, Bogo de Knoville, Alice of Everingham and Maud le Brut] demanded against Alan Plukenet the manor of K. with the appurtenances. And they said that one John Walerand died seised of those tenements in his demesne as of fee. From him the fee and demesne reverted to Cecily as aunt and heir, sister of William, father of John: from her to Cecily, Joan and Alice [the demandant] as three daughters and one heir; from Joan the right of her share descended to Bogo as [son] and heir, who now demands together with [Peter, Cecily, Alice and

Cecile descendi de droit de sa purpartie a Maude e Cecile de Elhnedden q'ore demande.

*Westcote* defendi tort etc., e dist qe com plus prochein heir Johan ne poent rien par cestui bref de cosinage demander; qar nous vous dioms qe après la mort Johan, de qi seisine il demandent, le Roi seisit tut son heritage pur ceo q'il fust sote etc. Par quoi cestui Alein tenant siwyt le *diem clausit extremum* al eschetour. Et mesme ceux qe ore demandent mistrent lour cleyrn e siwrent un altre *diem clausit extremum*. Par quoi returné fust en la chauncelerie par l'enqueste l'eschetour qe Alein fust plus prochein heir, e un altre enqueste pur les autres qe eux furent plus prochains heirs. Pur quel debat le Chaunc[elour] manda les enquestes devant le Roi. Par quoi meisme cesti Alein adonqe dist q'il fust plus prochein heir, e les autres disoient qe eux furent plus prochains heirs. Par quoi devant le Roi enqueste sur la procheineté se joint; ou trové fust qe A. fust plus prochein heir. Par quoi agardé fut qe la seisine del heritage fust livré a cest Alein. E demandoms agarde e jugement desicom devant le Roi fust trové par enqueste la ou vous meistes qe A. fust plus prochein, si ore par cest bref de possession poez rien clamer com plus prochein.

*Herle.* Volez altre chose dire pur response?

*Toud.* Ceo vous dioms en abatement de vostre bref.

*Herle.* Ceo est une excepcion a nostre accion. Pur ceo demandoms si vous volez la tenir.

*Touth.* Nous allegeoms un record ou trové fust qe vous ne fuistes nent plus prochein heir, et si la court veit qe nous devons altre chose dire nous dirroms volonters.

*Herle.* Sire, il allegent pur eux une enqueste de office qe fust pris sanz garant, qe ne tout mie la comune lei; e demandoms jugement si a cestui bref, q'est a la comune lei, ne devons estre r[espondu].

*Spigur.* Grantés primes ceo q'il vous allegent, e pus pledez par la, car autrement vostre repplicacion n'est pas receivable.

*Ber.* Nous ne averoms mie poer a prendre icy tiel verdist sanz bref le Roi, e nous entendoms qe le Roi si est plus avant de sun bref.

*Heingham.* Nous entendoms qe tiel veredit nous ne deit grever auxicom nos compaignons ont dist, car ceo qe est fet par ceo verdit ne puet jammès estre redressé par certification ne par atteinte pur ceo qe le verdit fust pris sanz original.

*Ber.* Ceo ne dye jeo mie (*quasi diceret etc.*)

Maud]; from Cecily the right of her share descended to Maud and Cecily [de Helyon], who now [demand].

*Westcote* defended tort etc. and said: As next heir of John they can demand nothing by this writ of cosinage; for we tell you that after the death of John, of whose seisin etc., the King seized the whole of his inheritance because he was an idiot. So Alan, the [new] tenant, sued the *diem clausit extremum* to the escheator. And the now demandants put in their claim and sued another *diem clausit extremum*. Then it was returned into Chancery by the escheator's inquest that Alan was next heir, and another inquest found that the others were next heirs. By reason of this debate the Chancellor sent the inquests [into the King's Bench]. So Alan himself then said that he was next heir, and the others said that they were next heirs. Therefore [in the King's Bench] an inquest was joined on the [question of] proximity; and Alan was found to be next heir. So it was awarded that seisin of the inheritance be delivered to him. And we pray award and judgment, whether now by this writ of possession you can claim anything as next [heir], since it was found [in the King's Bench] by an inquest, on which you put yourselves, that Alan was next heir.

*Herle*. Is that to be your answer?

*Toudeby*. We plead it in abatement of your writ.

*Herle*. It is a plea to our action. So we ask you whether you will hold to it.

*Toudeby*. We allege a record where it was found that you were not next heir; and if the court thinks that we ought to plead over, we will do so gladly.

*Herle*. Sir, they allege for themselves an inquest of office, which, being taken without warrant, does not override the common law. We pray judgment whether we ought not to be answered to this writ, which is at common law.

SPIGURNEL, J. First confess what they allege against you, and then plead about that, for otherwise your replication is not receivable.

BEREFORD, C. J. We here should not have power to take such a verdict without the King's writ; [but] we hold that the King is higher than his writ.

*Ingham*. We take it that, as our fellows have said, such a verdict ought not to hurt us, for what is done by such a verdict can never be redressed by certification or attain, since the verdict was taken without an original [writ].

BEREFORD, C. J. That I do not say. (He meant, etc.)<sup>1</sup>

<sup>1</sup> Apparently a hint that in such a case there might be certification or attain.

## Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 312, Norf. Ess. Hertf. Southamp. Wilts. Devon. Heref.

Bogo de Knoville, Alicia of Everingham, Maud le Brut, Peter de Helyon and Cecily his wife, by Henry of Heckston their attorney, demand against Alan de Plukenet one messuage and one carucate of land with the appurtenances in Wesenham<sup>1</sup> and Wesenham Thorp in the county of Norfolk by one writ, whereof John Walraund, cousin of Bogo, Alice, Maud and Cecily, whose heirs they are, was seised in his demesne as of fee on the day of his death etc.; and against the same Alan the manor of Reynham<sup>2</sup> with the appurtenances in the county of Essex by another writ, whereof the same John Walraund, cousin etc., was seised in his demesne as of fee on the day of his death etc.; and against the same Alan one messuage and one carucate of land and eight shillingworths of rent with the appurtenances in Neubury and Weston by Baldok in the county of Hertford by another writ, whereof the same John Walraund, cousin etc., was seised in his demesne as of fee on the day of his death etc.; and against the same Alan the manors of Burghton, Freynshemore and Munestok<sup>3</sup> with the appurtenances in the county of Southampton by another writ, whereof the same John Walraund, cousin etc., was seised in his demesne as of fee on the day of his death etc.; and against the same Alan one messuage and two carucates of land and twenty shillingworths of rent with the appurtenances in Stepellaynton and Fissherton<sup>4</sup> by Salisbury in the county of Wiltshire by another writ, whereof the same John Walraund, cousin etc., was seised in his demesne as of fee on the day of his death etc.; and against the same Alan the manor of Podynton<sup>5</sup> with the appurtenances in the county of Devon by another writ, whereof the same John Walraund, cousin etc., was seised in his demesne as of fee on the day of his death etc.; and against the same Alan the manor of Lugwardyn<sup>6</sup> with the appurtenances in the county of Hereford by another writ, whereof the same John, cousin etc., was seised in his demesne as of fee on the day of his death etc. And thereupon they [the demandants] say that the said John, cousin etc., was seised of all the said tenements with the appurtenances in his demesne as of fee etc. in time of peace, in the time of the present King, by taking thence esplees to the value etc., and thereof died seised etc.; and from him, since he died without an heir of his body, the fee etc. resorted to one Cecily as aunt and heir etc., sister of one William, father of the John of whose seisin etc.; and from her the fee etc. descended to one Joan and one Cecily and the said Alice of Everingham, one of the now demandants etc., together etc., as daughters and heirs etc.; and from the Joan the right of her purparty descended to Bogo, one of the now demandants etc., together etc., as son and heir etc.; and from Cecily the right of her purparty descended to Maud and Cecily wife of Peter Helyon, now demandants, as daughters and heirs etc.; and thereof they produce suit etc.

And Alan comes and defends their right when etc.; and he says that he ought not to answer them to this possessory writ; for he says that after the death of John Walraund, cousin etc., who died seised of all the said

<sup>1</sup> Mod. Weasenham.

<sup>2</sup> Mod. Rainham.

<sup>3</sup> Mod. Broughton, French

Moore, and Meon Stoke.

<sup>4</sup> Mod. Market Lavington and Fisherton Anger.

<sup>5</sup> Mod. Puddington.

<sup>6</sup> Mod. Lugwardin.



Note from the Record (*continued*).

tenements and others in divers counties without an heir of his body, the present King, of whom John held in chief, seized into his hand the whole inheritance which was John's etc.; and he says that afterwards as well he, Alan, as next heir of John Walraund etc., as Bogo, Alice, and the others claiming to be the next heirs of the same [John] sued respectively (*hinc inde*) writs in the Chancery, to wit, *diem clausit extremum*, directed to the escheator etc. to inquire of certain articles, as the manner is etc., so that in divers inquests made by the escheators in the said counties and returned into the Chancery, divers contrarieties and repugnancies were found; by reason whereof as well he (Alan) as Bogo, Alice, and the others were adjourned before the King himself, before whom the said inquests were likewise sent, to receive what the King should decree upon the premises; and he says that as well he (Alan) as Bogo, Alice, Maud, Peter and Cecily came before the King himself, and the inquests having been inspected before him, it could not appear (*constare non potuit*) to the King, because of such contrarieties etc., to whom (*cui vel quibus*) the said inheritance ought to be delivered as next [heir or heirs]. And it was said as well to him (Alan) as to Bogo and the others that they should show and declare (*ostenderent et docerent*) how and through whom they claimed the said inheritance of the seisin of John Walraund etc. So Alan then said that one William Walraund, grandfather of John Walraund, of whose seisin etc. Bogo and the others demand etc., begat of one Isabella his wife two sons, to wit, William and Robert and one daughter Alice; and Robert died without any heirs of his body etc.; and he [Alan] said that from William issued one Robert Walraund, who died without an heir of his body, and the said John Walraund, of whose seisin etc., who likewise died without [an heir of his body]; and thereby the right of the said inheritance resorted to Alice, daughter of William and Isabella, as sister of William son of William and aunt of the said John Walraund etc.; and from Alice there afterwards issued Alan de Plukenet, father of the said Alan, whose heir he is; and this he [Alan] was ready to aver etc. as the court etc.; so he said that thus and by suchlike descent he is next heir of John Walraund. And Bogo and the others did not deny that William Walraund had the said Isabella to wife etc.; but they said that William Walraund did not beget of her Alice, mother of Alan, father of the present Alan, as Alan said, nor begat he any other daughter, Alice by name, of the said Isabella, save only one Alice by name, who was afterwards a nun in the Abbey of Romeseye and died professed there without an heir of her body etc.; but they said that William Walraund begat of Isabella three sons and five daughters, to wit, Robert, Walraund, John and William, and Isabella, Alice, Cecily, Alice, and Maud; and they said that all the said sons and daughters died without heirs of their bodies etc., except William, son of William Walraund and Cecily; and that from William son of William Walraund issued one Robert Walraund, who died without an heir of his body etc., and John Walraund, of whose seisin etc., who likewise died without etc. as aforesaid; and that on his death the right of the inheritance resorted to Cecily, daughter of William

Note from the Record (*continued*).

and Isabella, sister of William son of William, and aunt of John Walraund, cousin etc.; and that from Cecily there issued three daughters, to wit, one Joan, Alice of Everingham, and Cecily etc.; and that of Joan issued Bogo de Knoville; and that of Cecily, daughter of Cecily, issued Maud le Brut and Cecily de Helyon, the now demandants; and they said that thus and by suchlike descent Bogo and the others are next heirs of John Walraund, and not Alan son of Alan, as Alan said. And as well Alan as Bogo and the others prayed that the truth on both sides (*hinc inde*) as to the proximity etc. be inquired by the country etc. Wherefore it was awarded that a jury should be made thereof etc.; and the sheriffs of the said counties were commanded that each of them should cause to come before the King himself wheresoever etc. twelve etc. of the neighbourhoods etc. by whom etc. and who neither etc. to find together etc. because both etc. And the jurors came before the King himself, and, being chosen by consent, said upon their oath that William Walraund in lawful matrimony begat of Isabella his wife, Alice mother of Alan de Plukenet, father of the present Alan, sister of William Walraund, and he begat no other issue of Isabella his wife, save only the said William Walraund, Robert and Alice, and one other daughter, also Alice by name, who afterwards was a nun in the abbey of Romseye and died there professed without an heir of her body; and so they said explicitly (*precise*) that the present Alan de Plukenet is next heir of John Walraund, of whose death etc. And therefore before the King himself it was then awarded that seisin of the tenements with the appurtenances be delivered to Alan as next heir of John Walraund etc., and that Bogo and the others take nothing etc. And whereas by the said jury taken before the King himself, upon which as well Bogo, Alice, and the others as Alan put themselves in form aforesaid, inquiry was made as to the proximity of Bogo and the others then claiming etc., and it was found by the same [jury] that Alan is next heir of John Walraund, of whose seisin etc., and not Bogo and the others, thereupon it was awarded before the King himself that seisin of the tenements be delivered to Alan as next heir of John Walraund; by virtue of which award Alan now is seised of the tenements; and so he [Alan] prays judgment whether he ought to answer to Bogo and the others to this writ of possession, which has to be determined (*habet terminari*) upon the same proximity etc., and especially as it would not be consonant to law that the said jury taken in so solemn a place before the King himself as aforesaid should be annulled by another jury of the country to be taken here upon this writ.

And Bogo and the others say that they ought not to be repelled in this behalf from using this writ by any inquest taken before the King himself; for they say that Alan does not show that any process was had before the King himself between Bogo and the others and Alan, as between demandants and tenants etc., and therefore Bogo and the others ought not by any inquest taken as of office before the King himself, and without an original writ, to be precluded from having their recovery by this their writ, which is at the common law and to be pleaded in the court here; and so they pray

Note from the Record (*continued*).

judgment, especially as Bogo and the others cannot be aided in this behalf by way of certification or of a jury of twenty-four to convict the jurors of such an inquest taken before the King himself.

A day is given them to hear their judgment here on the octave of the Purification, saving to the parties their arguments to be adduced on the one side and the other etc.

Afterwards, process being continued on both sides until a month from Easter in the fifth year [A.D. 1312], there came as well Alan in his proper person as Bogo and the others by Henry of Hexton their attorney. And a day is given them here three weeks from Michaelmas to hear their judgment, saving to the parties their arguments to be adduced on the one side and the other. Afterwards on that day came the parties by their attorneys. And a day is given them here on the morrow of the Purification to hear their judgment, for that the judgment is not yet [ready]. Afterwards at that day came Alan by his attorney and offered himself on the fourth day against Bogo, Alice, Maud, Peter and Cecily of the aforesaid pleas to the said seven writs in the said counties. And they came not and were the demandants. Therefore let Alan go thence without day, and be Bogo and the others and their pledges to prosecute on each writ in mercy etc. Let inquiry be made for the names of the pledges etc.

[A copy of the above record, except the last paragraph, appears in one of our manuscripts (Y, f. 59b). The same book also gives (f. 58) a copy of the record of the proceedings in the Court of King's Bench. A note of these will be found in 'Placitorum Abbreviatio,' p. 310, and the maker of that book has drawn out the two pedigrees in diagram. On the writs of *diem clausit extremum* juries in various counties, including Norfolk, Wiltshire, and Hampshire, had found for Alan, while in others, including Gloucester and Hereford, verdicts were found for Bogo and his co-parceners. 'And thereupon, the said inquisitions being seen and fully examined, because the said inquisitions are found to be contrary to each other, repugnant and variant so that by them it cannot clearly appear who of the said Alan and the others are or is next heir of John, nor to whom the lands and tenements which are of his inheritance ought to be rendered as next heir, and because the King's acts ought not to be founded upon uncertainties, especially in such a case, since he can be informed in his Court upon the certainty of the facts, the parties, since they are present in Court, are told, both for the purpose of hastening their suit and for the purpose of informing the King, that they should show the Court who of them is the next heir of John and how and in what manner.' Alan then stated his case and offered to aver it. The others stated their case and prayed an inquest of the country. Alan joined issue. The jury came half from Hampshire and half from Gloucestershire. The jurors found Alan's pedigree true and the other pedigree false. It was awarded that the others take nothing, and that seisin be delivered to Alan as next heir. Alan was told to sue to the King in the Chancery, and this record is sent thither.]<sup>1</sup>

<sup>1</sup> See 'Dict. Nat. Biog.' for Alan Plugenet and Robert Walerand.



28. BERNEVAL *v.* CHAVENT.

Assise de novele diseisine, ou el mis avaunt fyn sour rendre a barrer le pleyntif cum heir, et l'autre dit q'il fust pas heir procheyn etc. *Quere de exitu.*

I.<sup>1</sup>

Johan de Bernewelle<sup>2</sup> porta une assise de novele disseisine vers la Dame de Chavent.

*La Dame.* Assise ne deyt estre qar un Piers de Arnewelle<sup>3</sup> pierre mesme cesty Johan, qi heir il est, graunta et rendy mesme lez tenemenz a P. de Chavent nostre baroun et a nous<sup>4</sup> et obliga luy et ces heirs a la garrauntie etc.; et issint sumes entrez<sup>5</sup> par la fyn: jugement si sauntz moustrer tittle plus tardif coment fraunk tenement luy soit acreu si assise deive estre.

*Fris.* Sire, la ou il nous bient barrer par my une fyn etc. et com heir P. nostre pierre, nous vous dioms qe J. n'est pas heir P.<sup>6</sup> plus proscheyne: prest etc.; et demaundoms jugement si assise ne deyve estre.

*Toud.* Qi donqe?

*Fris.* A ceo n'avoms mestier a respoundre, einz suffist a ceo qe vous nous volez barrer com heir a dire nient heir.

Et pur difficulté le recorde fust maundé en baunke as utaves de Saint Martyn.

*Herle* pria l'assise *ut supra.*

*Berr.* Cest enqueste n'est mye resceyvable<sup>7</sup> en la forme com vous le tendet encountre la fyn q'il mettent avaunt, qe si trové fust q'il ne fust plus proscheyne heir quel jugement se freit?

*Fris.* Sire nous entendoms qe vous irriez al assise pur nos damages.

*Berr.* Il ount dit et aleggé une fyn etc. par P., qi heir vous estes, par ou ij. choses sount entendutz:<sup>8</sup> tenaunce affermé qe vous barre etc.,<sup>9</sup> et garauntie qe vous bare etc. si vous soietz heir etc. Donqe coment qe vous r[espoignez] al un point etc. sur ceo qe vous estes heir ou noun, il covient moustrer tittle coment vous avenistes al fraunktenement, le quel il ount affermé etc. par la fyn q'est si solempne etc.<sup>10</sup>

<sup>1</sup> Text from *A*: compared with *D*, *T*, *P*. Headnote from *A*. <sup>2</sup> Johan Revenale *P*. <sup>3</sup> Berneville *P*; Bernewelle *D*. <sup>4</sup> *Ins.* et as heirs *P*. <sup>5</sup> einz *P*. <sup>6</sup> Joh. *D*. <sup>7</sup> *Ins.* de ley *P*; de court *D*. <sup>8</sup> entendendutz *A*. <sup>9</sup> *Om. to after next* etc. *D*. <sup>10</sup> *Ber.* Unqore navez pas moster coment le fraunktenement est a vous avenu *P*.



28. BERNEVAL *v.* CHAVENT.

To an assize of novel disseisin a conusance by fine with warranty to the defendant is pleaded, with an allegation that the plaintiff is the conusor's heir. Is it a good reply that the plaintiff is not heir? <sup>1</sup>

## I.

John of Berneval brought an assize of novel disseisin against the lady of Chavent.

*The Lady.* An assize there ought not to be, for one Peter of [Berneval], father <sup>2</sup> of this John, whose heir he is, granted and rendered the tenements to P. de Chavent our husband and to us, and bound himself and his heirs to warranty; and so we entered by the fine. Judgment, whether there ought to be an assize, unless he shows some later title by which freehold has accrued to him.

*Friskeney.* Sir, whereas they hope to bar us by a fine etc., and as being heir of P. our father, we say that [we are] not P.'s next heir: ready etc.; and we pray judgment whether there ought not to be an assize.

*Toudeby.* Then who [is heir]?

*Friskeney.* We need not answer. To you who wish to bar us as heir, it is enough to say 'not heir.'

And because of the difficulty the record was sent into the Bench on the octave of Martinmas.

*Herle* prayed the assize as above.

BEREFORD, C.J. This inquest, in the form that you tender it, is not receivable against the fine that they produce; for what judgment could be made if it were found that he was not next heir?

*Friskeney.* We think, Sir, that you would go [on to take] the assize as to our damages.

BEREFORD, C.J. They have pleaded and alleged a fine made by P., whose heir you are. That implies two points: an affirmance of [their] tenancy which bars you, and a warranty which bars you if you are heir. So, even though you do answer to the point about your being heir, you still ought to show some title by which you came to the freehold, which freehold they have affirmed [in themselves] by a fine, which is so solemn etc.

<sup>1</sup> The record, of which a note is appended, shows no allegations made by the parties after the removal of the case into the Bench. <sup>2</sup> Really nephew.

*Malb.* Nous entendoms qe si trové soit q'il n'est pas heir, vous enquerrez outre s'il fust seisi de frauntenement et disseisi.

*Berr.*<sup>1</sup> Ceo n'est mye maniere qaunt home plede et l'assise chaunge<sup>2</sup> en enqueste de retourner<sup>3</sup> et pleder al point del assise.

*Will.* S'il meissent avaunt encountre moy relees ou quiteclamaunce et trové fust qe ceo ne fust<sup>4</sup> mon fait, nous entendoms d'avoir l'assise sur nos damages. Sic ex parte ista.

*Berr.* N'est pas semblable, qar le frauntenement n'est pas affermé en sa persone par la quiteclamaunce, auxi com par la fyn, qe tiel manier de fait si poet homme dedire etc. Par quei greignour fey devoms doner al un qe al altre etc.

{*Ber.*<sup>5</sup> Ceo n'est pas semblable, qe par l'acquitaunce ne serroit pas le franctenement affermé en sa persone cum est par la fyn; qe la ou jeo mette avaunt relees en bare de vous, le fet poet estre dedit; mès si jeo meyse avaunt fyn a qei vostre mere fut partie, la fyn ne put estre dedit. Par qey homme dorra gregnour foi a celi qe prent seisine par une fyn, qe ne put estre dedit, qe a un relees, qe poet estre dedit.}

Et postea pendente placito Johannes de Bernewelle obiit, et ideo mors solvit etc.<sup>6</sup>

## II.<sup>7</sup>

En une assise de novele disseisine dount le recorde fut maundé en banke fut ensi pledé: qe le defendaunt dit qe des tenemenz q'ele tent se leva une fyn, scilicet, qe un J. qe H. etc. conust etc. come le droit cele et le droit son baroun par quele fyn nous sumes einx<sup>8</sup> et si etc. d'un estraunge etc. et demaundoms jugement si assise etc.

Le pleyntife dit qe la ou par fyn qe se leva entre J. qy heir ele ly dit estre de ly veut barrer del assise ceo ne put ele q'il n'est pas son heir prest etc.

{*Herle.*<sup>9</sup> Jeo ne su pas son heir: prest etc.}

Et alii econtra.

Et adiornati sunt partes in banco.

Viso recordo<sup>10</sup> *Berr.* Ceo pas<sup>11</sup> ou vous estes fyny<sup>12</sup> hors de

<sup>1</sup> *Om.* speech *P.*      <sup>2</sup> soit chaunge *T.*      <sup>3</sup> recoverer *T.*      <sup>4</sup> *Ins.* mie *T.*  
<sup>5</sup> Substitute for last speech *P.*      <sup>6</sup> Et postea Johannes obiit etc. *P.*      <sup>7</sup> Text from *R*: compared with *M*, *P.*      <sup>8</sup> fin entre son baroun et lui et un J. cosyn le pleyntif q' heir par quel fin ele fut einz *M*; *sim.* *P.* but entre le cosyn le pleynt. et ly.      <sup>9</sup> Substitute for last sentence *M*; *sim.* *P.*      <sup>10</sup> recorde *R.*      <sup>11</sup> Ces poyntz *M*; Ceo poynt *P.*      <sup>12</sup> estes sount *M*; estes descenduz si est *P.*

*Malberthorpe.* We think that if it be found that he is not heir, you will proceed to inquire whether he was seised of the freehold and disseised.

BEREFORD, C.J. When a man pleads, and the assize is changed into an inquest, it is not the practice to return and plead to the point of the assize.

*Willoughby.* If they produced against me a release or quitclaim, and it was found that it was not my deed, we understand that we should have the assize for our damages. So here.

BEREFORD, C.J. Not a like case, for the freehold is not affirmed in his person by a quitclaim as it is by a fine, for such a deed a man may deny. Therefore we owe greater credence to [a fine] than to [a deed].

{BEREFORD, C.J.<sup>1</sup> Not a like case, for by the quitclaim the freehold would not be affirmed in his person as it is by the fine. Where I produce a release as a bar to you, the deed may be denied; but if I produced a fine to which your mother was party, it could not be denied. So greater credence is due to one who takes seisin from a fine, which cannot be denied, than to a release, which can be denied.}

Afterwards John of Berneval died pending the plea. Thus death solves [all things].

## II.

In an assize of novel disseisin, the record whereof was sent into the Bench, it was thus pleaded: the defendant said that of the tenements which she holds a fine was levied, to wit, that one J., [whose heir the plaintiff is], confessed etc. as her right and that of her husband, by which fine we are 'in,' and if we were [impleaded] by a stranger etc.<sup>2</sup>; and we pray judgment whether [there ought to be] an assize.

The plaintiff said that whereas she wishes to bar him from the assize by a fine levied between her and J., whose heir (so she says) he is, this she cannot do, for he is not [J.'s] heir: ready etc.

{*Herle.*<sup>3</sup> I am not his heir: ready etc.}

Issue joined.

Afterwards they were adjourned into the Bench.

Having inspected the record, BEREFORD, C.J.: The point where

<sup>1</sup> An alternative for the last speech.    <sup>2</sup> The formula of a rebutter by warranty.

<sup>3</sup> Alternative for last sentence.

assise, et <sup>1</sup> tut fut <sup>2</sup> il averé servereit de rien, qe tut fut il trové q'il ne fut pas son heir, uncore n'est il forqe al assise.

*Malm.* Si ensi fut trové, nous entendoms q'ele serreit a taunt <sup>3</sup> de la disseisine, dount ne remaynt mesqe <sup>4</sup> l'assise de damages.

*Berr.* Sur quel poynt <sup>5</sup> recoversa il fraunc tenement ?

*Wilby.* L'assise <sup>6</sup> dirra <sup>7</sup> nostre <sup>8</sup> title. Et qaunt le defendaunt en plee d'assise chace le pleyntife par son r[espouns] a point <sup>9</sup> hors d'assise, s'il ne put tiel poynt mayntenir, il est ataunt <sup>10</sup> de la disseisine, qe ceo est a son peril. Dount a ly est a escheure <sup>11</sup> son damage, qe si autrement fut, ce serreit a trier primes un fet par cas hors d'assise par une enqueste et pus ferir al assise.<sup>12</sup>

*Berr.* Eynz est <sup>13</sup> a vous qe portez l'assise de la mayntenir en poyntz de assise. Et si par cas hors de tiels irrez, qe ceo seit par tiel r[espouns] dount si le contrarie <sup>14</sup> seit trové ne forclos <sup>15</sup> pas le pleyntif del assise, auxi comme en ceste assise.<sup>16</sup> Et vous dy q'il ne vous ount me qe envesgli <sup>17</sup> par lour reson,<sup>18</sup> et meyz vaut ore a redresser le si J. eit meffet qe ceste enqueste etc. tut revers qe ou est fet etc.<sup>19</sup>

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 231d, Essex.

Heretofore, before Robert of Retford and John of Mutford, justices assigned to take assizes in the county of Essex at Reyleygh on [May 27, 1309] Tuesday next after the feast of the Holy Trinity in A.R. 2, an assize came to find whether Agnes, wife that was of Peter de Chauvent, John Chauvent, and William Abel, clerk, unlawfully etc. disseised Peter de Bernevall' of his free tenement in Raurethe and Hadlee <sup>20</sup> since the first etc. And thereupon he complains that they disseised him of the manor of Raurethe etc.

And John came, and the others came not. And one William of Plumpstede answered for them as bailiff etc. And for William Abel he says that he holds nothing in the tenements and thereof did no tort nor disseisin. And for Agnes as tenant etc. he says that a fine was levied in the Court of Edward [L.] at Westminster on the quindene of St. John Baptist in A.R. 25 [A.D. 1297] before John of Metingham and his fellows, justices of the

<sup>1</sup> *Om.* et R.    <sup>2</sup> fut tut M.    <sup>3</sup> atteynt M; *sim.* P.    <sup>4</sup> donqe remeynt riens si noun P.    <sup>5</sup> title M, P.    <sup>6</sup> *Ins.* vous M, P.    <sup>7</sup> durra P.    <sup>8</sup> *Om.* nostre P.    <sup>9</sup> poyntz M.    <sup>10</sup> atteynt M; *sim.* P.    <sup>11</sup> est de esthupe M; eschevyr P.    <sup>12</sup> pus pasera lassise M; puis prier lassise P.    <sup>13</sup> Oyez cest M; Oyl est P.    <sup>14</sup> si contrate (?) R.    <sup>15</sup> forlest M; forclost P.    <sup>16</sup> com de ceo cas M; com en ceo cas P.    <sup>17</sup> qil vous ne ount mes enveuglie M; *sim.* P.    <sup>18</sup> reson R; r' M, P.    <sup>19</sup> et meutz ore redresser si meffet qe ceste enqueste tut revers qe en fet M; et meutz est ore de adrescer si riens soit meffet qe apres ceste enqueste tut a traverser qest fet P.    <sup>20</sup> Rayleigh, Rawreth, and Hadlee, near the Thames.



you ended was outside the assize, and even if it were averred, it would be good for nothing, for if he were found not to be heir, still he is only at the assize.

*Malberthorpe.* Were it so found, we think that she would be attainted of the disseisin, so that nothing would remain but to take the assize for our damages.

BEREFORD, C.J. Upon what title would he recover the freehold?

*Wilby.* The assize will tell our title. When the defendant in a plea of assize by his answer drives the plaintiff to a point outside the assize, if [the defendant] cannot maintain that point, he is attainted of the disseisin, for he acted at his peril. So it is for him to avoid what may damage him; and, were it otherwise, we might first perchance try a fact outside the assize by way of inquest and afterwards the assize would pass.

BEREFORD, C.J.<sup>1</sup> Rather it is for you who bring the assize to maintain it in the points of assize. If by chance you go outside, let that be by such an answer that if the contrary be found the plaintiff will not be foreclosed from the assize as [he would be] in this assize.<sup>2</sup> And I tell you that they have only inveigled you by their answer: and it were better to redress the matter, if there has been wrong procedure, than to upset all that has been done after this inquest is taken.

**Note from the Record** (*continued*).

Bench, between Peter de Chauvent, father of John, whose heir he is, and Agnes, wife of the said Peter, plaintiffs, and John de Bernevall', cousin of the said Peter de Bernevall', whose heir he is, impedients, of the manor of Raurethe with the appurtenances, to wit, that John confessed the manor to be the right of Peter as that which Peter and Agnes have of John's gift, to have and to hold to Peter and Agnes and the heirs of Peter, of the King and his heirs for ever, and that John and his heirs would warrant the manor with the appurtenances to Peter and Agnes and the heirs of Peter against all men for ever. And he proffers a 'part' of the fine, which witnesses this. And he prayed judgment whether there ought to be an assize between them against the fine.<sup>3</sup>

And John Chauvent said that after the death of Agnes the reversion of the manor belongs to him, as manifestly appears by the fine; and he prayed judgment whether there ought to be an assize against the fine. And he said nothing else why the assize should stand over (*remaneat*).

Therefore be the assize taken. But it was put in respite until Monday

<sup>1</sup> Our books are discrepant and corrupt.

<sup>2</sup> The text is not plain.

<sup>3</sup> The foot of this fine is not to be found. A grant of the manor, which was held of the King in chief, by John de Berneval to Peter de Chaumpvent and Agnes his wife and the heirs of Peter, was confirmed by letters patent of 22 February, 1296 (*Calendar of Patent Rolls*, 1292-1301, p. 185).\*

Note from the Record (*continued*).

on the quindene of St. Michael for the default of [five names], recognitors, who came not. Therefore be they in mercy. And the sheriff was commanded to have the bodies etc. and to put so many and such, both knights etc.; so that the original writ remained with (*penes*) the sheriff, and the patent with the plaintiff.

Afterwards on [June 8, 1310] Monday in the week of Pentecost in A.R. 3 came Peter; and likewise Agnes and John, who were reattached, came; and William [Abel] came not, but William [of Plumpstede] answered for him as bailiff etc. And Agnes answers as tenant etc. and says that she holds the manor for term of her life only, and that the right and reversion thereof belong to John de Chauvent, son and heir of Peter de Chauvent. And Agnes and John, who joined himself to Agnes in answering, said that an assize there ought not to be, for they said that if they were impleaded by any other for the tenements, Peter,<sup>1</sup> brother of one John, father of the said John de Bernevall', as uncle and heir of John de Bernevall', would be bound by the fine to warrant the tenements to them; and they prayed judgment.

And Peter said that the assize ought not to stand over etc.; for he said that he is not the heir of John de Bernevall'; for he said that John at Watford in the county of Hertford espoused one Albreda, of whom he begat

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*Nuper obiit* ou pert si jeo alegge excepcioun de drein seisi, il moy covient mostrer la seisine plus tardif.

I.<sup>2</sup>

Nota en un *nuper obiit* porté vers un tenaunt etc.

*Migg.* Aultrefoitz<sup>3</sup> fust bref porté vers mesme ceaux q'ore portent cesti bref, ou il viendrent et r[espondirent] com tenauntz. Et desicome eux mesme r[espondirent] com tenauntz et furent<sup>4</sup> seisis demaundoms jugement si a cesty bref countaunt de la seisine lour auncestre plus haut deivent estre r[esponduz].

*Malb.* Donqe grantez vous qe nostre auncestre morust seisi.

*Migg. ut supra.*

*Hervi.* Excepcioun de derreyn seisine si est doné en aultre manere qe de allegger q'il r[espondi] com tenaunt, qar s'il vousist avoir aultre bref de eadem natura<sup>5</sup> de sa seisine demene, il ne pout

<sup>1</sup> The plaintiff in the assize.      <sup>2</sup> Text from *A*: compared with *D*, *T*. Head-note from *A*.      <sup>3</sup> *Om.* Aultrefoitz *T*.      <sup>4</sup> *Om.* furent *D*.      <sup>5</sup> de mesme la nature *T*.

Note from the Record (*continued*).

a legitimate daughter, Joan by name, who is living and his heir. And he prayed that this be inquired of the country.

Issue was joined, and a *venire facias* was awarded to the sheriff [of Hertfordshire]<sup>1</sup> for Monday next after the octave of St. Michael at Reylegh, and likewise the sheriff of Essex was commanded to have the bodies of the recognitors.

Afterwards at that day at Reylegh came the parties and the jurors of the assize. And the jurors of the county of Hertford came not. And thereupon the sheriff of that county announced (*mandavit*) that he had returned the writ etc. to the bailiffs of the liberty of St. Alban, who answered him that execution could not be done, because the men of the liberty of St. Alban do not go outside the liberty before (*coram*) any justices or ministers of the King. Therefore a day was given the parties here<sup>2</sup> at this day, to wit, the morrow of All Souls, and [it was commanded] that the sheriff should have the bodies of the recognitors etc.<sup>3</sup>

And now come as well Peter as Agnes and John in their proper persons, and William Abel by William of Plumpstede, bailiff. And a day is given them here on the octave of St. Martin from day to day.

29. KEYLMERSSEH *v.* KEYLMERSSEH.<sup>4</sup>

In a *nuper obiit* a plea that since the ancestor's death the demandant has answered as tenant is not equivalent to a plea of 'last seisin.'

## I.

In a *nuper obiit* brought against a tenant,

*Miggeley*. Heretofore a writ was brought against those who now bring this writ, and they came and answered as tenants. And since they themselves answered as tenants and [as being] seised, we pray judgment whether they ought to be answered to this writ, in which they count on the seisin of an ancestor higher up.

*Malberthorpe*. Then you admit that our ancestor died seised.

*Miggeley* as before.

STANTON, J. The 'exception' of 'last seisin' has to be framed otherwise than by saying that [the demandant] answered as tenant; for, if he wished to have another writ of the same nature on his own seisin, he could not have it. So, if you wish to plead that

<sup>1</sup> This appears from the margin.

<sup>2</sup> In the Common Bench.

<sup>3</sup> The word 'cras' is here written in the margin of the roll.\*

<sup>4</sup> Proper names from the record, of which a note is printed in the Appendix.

*Malb.* demaunda oy du bref.

Et habuit; et le bref fust 'quod acquietet etc. de libero tenemento quod de eo tenet in Ablestone,'<sup>1</sup> sauntz plus.

*Malb.* Par lour counte il supposent q'il tient les tenemenz en Blestone et Etone par un service, et le bref ne fait mencion fors de Ablestone. Jugement de la variance.

*Denom.* Nous tenoms lez tenemenz en ambedeux les villes de Alice et par un entier service; la quele Alice tient lez tenemenz en Blestone de G., par qi destresce nous portoms ore cesti bref, et lez tenemenz en Etone si tient ele d'un Richard, si q'ele est meen envers deux devers seignours. Dount si nostre bref deist 'de libero tenemento en ambedeux les villes,' donqe supposereit nostre bref un faux, qar ele n'est<sup>2</sup> meen envers G. si noun del fraunctenement en Blestone ou nous sumes destreint. Et desicome nostre bref est acordaunt al fait, jugement si le bref ne soit asset bon.

*Malb.* Vous purriez avoir bon bref acordaunt a vostre cas dez tenemenz en ambedeux les villes, et donqe en countaunt dire coment vous estes distreint en l'une<sup>3</sup> ville. Mez ore l'acquitaunce est en le droit<sup>4</sup> et tot un en ly mesme, ou vous l'avet severé par<sup>5</sup> bref. Jugement etc.

*Denom.* Ceo serroit un malveys bref 'quod eum acquietet de servicio quod Galfridus ab eo exigit etc. etc. de libero tenemento quod de prefata Alicia tenet in Blestone et Etone unde eadem<sup>6</sup> media est inter eos etc.'; et par taunt supposeroms q'ele fust nostre meen de toutz<sup>7</sup> lez tenemenz vers Geffroi; et ceo serreit un faux. Par quei etc.

*Fris.* L'acquitaunce est en le droit et tot un et<sup>8</sup> ne poet estre severé. Dount si vous devez l'acquitaunce dereigner, ceo serroit auxi bien par r[esoun] dez tenemenz en Blestone com par r[esoun] dez tenemenz en Etone et e contra;<sup>9</sup> et ceo ne purriez vous mye, qe Etone n'est mye nommé en le bref. Par quei ceo serroyt sauntz garraunt a dereigner acquitaunce dez services etc. d'altres tenemenz qe de ceaux nomez etc. Par quei etc.

*Hervi.* Gardez vos jours etc.

A queu jour *Malb.* Bien avet entendu coment Johan Rogiser ad porté soun bref de meen vers Alice de Latymer et ad counté q'il tient de Alice etc. en Blestone et en Etone. Et del heure qe Etone n'est pas nommé en le bref, jugement *ut supra*.

<sup>1</sup> Blestone *D*, *T*, and so below.    <sup>2</sup> *Ins.* nostre *T*; *ins.* nostre and om. nest *D*.  
<sup>3</sup> en la *A*; en lune *T*; en la une *D*.    <sup>4</sup> bref *T*.    <sup>5</sup> *Ins.* vostre *D*.    <sup>6</sup> Om.  
eadem *D*.    <sup>7</sup> mesmes *D*.    <sup>8</sup> *Ins.* qe *D*, *T*.    <sup>9</sup> contrario *D*.



*Malberthorpe* prayed oyer of the writ.

He had it; and the writ ran: 'That she acquit etc. of the free tenement that he holds of her in [Wyboston],' without more.

*Malberthorpe*. By their count they suppose that he holds the tenements in [Wyboston] and Eaton by one service, and the writ mentions [Wyboston] only. Judgment of the variance.

*Denom*. We hold the tenements in both villis of Alice and by one entire service, and she holds the tenements in [Wyboston] of G., and it is of his distress that we now bring this writ. And she holds the tenements in Eaton of one Richard. So she is mesne between us and two different lords. If, then, our writ said 'of the free tenement in both villis,' our writ would suppose a falsehood, for she is mesne between us and G. only for the free tenement in [Wyboston], where we are distrained. Judgment, whether our writ be not good enough, since it accords with the fact.

*Malberthorpe*. You might have a writ appropriate to your case for the tenements in both villis, and then in counting you might say that you were distrained in one of them. But, as it is, the duty to acquit is in 'the right' and a single whole, and you have severed it. Judgment etc.

*Denom*. It would be a bad writ that said 'that she acquit him of the service which Geoffrey exacts from him etc. etc. of the free tenement that he holds of the said Alice in [Wyboston] and Eaton, whereof she is mesne between them etc.,' for thereby we should suppose that she is mesne between us and Geoffrey for all the tenements; and that would be false. Wherefore etc.

*Friskenev*. The duty to acquit lies in 'the right,' and cannot be severed. So, if you are to deraign the acquittance, that should be by reason of the tenements in [Wyboston] as well as of those in Eaton, and *vice versa*. And that you cannot do here, for Eaton is not named in your writ; and for you to deraign an acquittance of services of tenements other than those named in [your writ] would be without warrant. Wherefore etc.

STANTON, J. Keep your days etc.

At that day *Malberthorpe*. You have heard how John [Rungefer] has brought his writ against Alice la Latymer, and has counted that he holds of her etc. in [Wyboston] and in Eaton. And since Eaton is not named in the writ, [we pray] judgment as above.

*Hervi.*<sup>1</sup> Purceo qe vous eussent dereigné l'acquitaunce, ceo serroit auxi bien pur vostre tenaunce en Etone com en Blestone, ou ley ne seoffreit qe acquitaunce peusse estre desreyné dez tenemenz qe ne sount pas nomez etc.; et Etone n'est pas nommé. Par quei agarde la court qe vous<sup>2</sup> preignet rien par vostre bref etc. mez etc.

## II.<sup>3</sup>

William porta bref de meen vers Alice de Latimer et demaunda par bref l'acquitaunce des tenemenz en W.;<sup>4</sup> et par counte en W. et en B.<sup>5</sup>

*Malm.* Jugement de la variaunce, qe par bref vous ne demaandez l'acquitaunce fors des tenemenz en W., et en vostre counte avez counté en ij. villes: jugement.

*West.* Il n'ad<sup>6</sup> pas variaunce, qe tut face jeo mencioun qe jeo tynk de vous en ij. villes, jeo ne bye<sup>7</sup> avoir acquitaunce fors en W. la ou nous sumes destreint, qe aylours n'ay jeo mestier d'avoir acquitaunce. Estre ceo la ou ma actioun est bon de ley saunz dire autre chose qe la verité, j'averey bon bref et bon counte. Sic in proposito. Item vous tenez les tenemenz qe nous tenoms de vous en W. et en B. de divers seignours, issi qe vous n'estes pas meen entre nous et A. des tenemenz en Westone ou nous sumes destreint.<sup>8</sup>

*Toud.* Ceo ne serroit pas issue en<sup>9</sup> ceo plee a dire qe nous ne sumes pas meen saunz respondre a l'acquitaunce. Estre ceo si jugement se freit par defaute de<sup>10</sup> forme de statut, auxi bien perdroms<sup>11</sup> les serviz del un cum de l'autre, des ceux il ne demaunde pas l'acquitaunce.<sup>12</sup> Et demaundoms jugement.

*Denom.* Si ambe ij. les viles fusent nomez en le bref, ceo vaudroit<sup>13</sup> le meyns, qe si la proclamacioun se fait par le defaute le meen, il serroit agardé qe, entrelessaunt le meen, qe nous atournoms<sup>14</sup> al chef seignour des serviz de ambe ij. les villes<sup>15</sup>; et issint devendroms soun tenaunt des serviz ou il n'ad fee ne seignourie; quod esset inconveniens.

*Pass.* A ceo qe me semble vostre r[esoun] taile pur nous, qe si ceti bref qe vous ore portez fut bon, et vous tenez<sup>16</sup> de nous ambe ij. les villes par un serviz, q'est un entier et nent departie eyaunt regard

<sup>1</sup> Ber. D.    <sup>2</sup> Ins. ne D.    <sup>3</sup> Text from P; compared with M, B.    <sup>4</sup> bref qil acquietast des services qe un A. lui demaunde de frauncement qe del auvaundite A. tent en B. M; sim. B.    <sup>5</sup> Ins. la vient A. et demaunde sute a sa court etc. B.    <sup>6</sup> ny ad M, B.    <sup>7</sup> Ins. ore B.    <sup>8</sup> Ins. einz de ceux tenemenz entre nous et F. M; sim. B.    <sup>9</sup> de B.    <sup>10</sup> se deveroit par M; se freit par B.    <sup>11</sup> perdra il B.    <sup>12</sup> Ins. forsque de tenemenz en W. M, B.    <sup>13</sup> bref vaudroit il M.    <sup>14</sup> attournas-soms M; attourneroms B.    <sup>15</sup> maners B.    <sup>16</sup> tenisetz B.

STANTON, J. Whereas, if you were to deraign the acquittance, that would be as well for your tenancy in Eaton as in [Wyboston], and law will not suffer that an acquittance be deraigned for tenements which are not named [in the writ], and Eaton is not named, therefore the Court awards that you take nothing by your writ etc., but [be in mercy].

## II.<sup>1</sup>

William brought his writ of mesne against Alice de Latimer and demanded by writ an acquittance of tenements in W., and by count [of tenements] in W. and B.<sup>2</sup>

*Malberthorpe.* Judgment of the variance, for by writ you demand acquittance only of tenements in W., and in your count you count of two vills : judgment.

*Westcote.* There is no variance ; for, although I mention that I hold of you in two vills, I am only trying to get acquittance in W., where we are distrained, for I have no need of acquittance elsewhere. Besides, where I have a good action in law without saying anything but the truth, I shall have a good writ and a good count. So in the case before us. Also you hold of different lords the tenements that we hold of you in W. and B., so that you are not mesne between us and A. [except]<sup>3</sup> of the tenements in W. where we are distrained.

*Toudeby.* It would be no issue of this plea to say that we are not mesne, without answering as to the acquittance. Likewise, if judgment were made on default by the form of the Statute,<sup>4</sup> we should lose the services of [both tenements, including that] in respect of which no acquittance is demanded. We pray judgment.

*Denom.* If both vills were named in the writ, that would be still worse ; for if the proclamation<sup>5</sup> were made on default of the mesne, the judgment would be that, leaving out the mesne, we should attorn to the chief lord for the service in both vills ; and in that way we should become his tenant for services where he has neither fee nor seignory : which would be absurd.

*Passeley.* It seems to me that your argument makes for us ; for, if this writ that you now bring were good, and you held of us both vills by one service—which would be a single whole and not partible

<sup>1</sup> This case appears in the Old Edition, p. 93.

<sup>2</sup> This is too brief. It seems hardly accurate to say that he demanded an acquittance in both.

<sup>3</sup> See the variants. One of our books

seems to say the reverse.

<sup>4</sup> Stat. Westm. II. c. 9, establishing a procedure for the extinction of the mesnalty where the mesne makes default.

<sup>5</sup> Under the Statute.

a les ij. viles, l'atournement par<sup>1</sup> la proclamatioun ne se put fere de partie de serviz et de partie nent, eyns covent<sup>2</sup> qe ceo soit de l'entier. Et depuis q'il est un en ly mesme, dount ensiwereyt qe par ceti bref en quele fors<sup>3</sup> qe la une vile est nomé, se freit atournement des serviz dues de la vile nent nomé; quod esset inconveniens.

*Denom.* La ou vous supposez qe nous devons atourner a chef seynour par la proclamation des serviz qe nous fesoms a vous, q'est un et nent departable eyaunt regard a les ij. viles, il n'est pas issint, einz devons atourner des serviz qe vous mesmes<sup>4</sup> faites al chef seynour, quel serviz est soul due<sup>5</sup> de tenemenz<sup>6</sup> dount nous demaundoms l'aquitaunce.<sup>7</sup> Jugement.<sup>8</sup>

### III.<sup>9</sup>

Un A. porta sun bref de meen vers Alice la Latimere, e dist qe a tort ne lui aquite des services qe Johan l'Estrange de lui demande etc., qe la ou il tient etc. tenemenz en Wyboldistone e Hecghtone par homage, fealté e par les services de v. sous, la vient H. e lui demande<sup>10</sup> etc.

*Pass.* Quei avez de nous lier a l'aquitance?

E mist avant chartre qe voleit qu'il tient de lui certainz tenemenz en W. e en H.

E nous jugement de la variance entre vostre bref e l'especialté, qar vostre bref voelt qe nous vous aquiteroms des services des tenemenz qe vous tenez de nous en W. e H. par homage, fealté e par les services de v. sous. E l'especialté voet qe nous vous aquiteroms des services queux etc. des tenemenz qe vous tenez de nous en W. e en H. par les avantdiz services de v. sous. E demandoms jugement, desicom vous tenez tenemenz en ij. villes par un service si vous püissez l'aquitance vers nous dereigner des tenemenz en W. sanz faire mencion des tenemenz en H., desicum il sunt tenuz par un service etc.

*Mugg.* Nostre plainte est fondu sur nostre cas, et nous ne poems pleindre autrement si noun solom nostre grevance, car autrement nostre plainte serroit faus, e nous ne sumes distr[eint] mès des tenemenz qe nous tenoms en C. Jugement si nous ne devons estre aqité.

*Pass.* Jeo vous proefs qe vous ne poez mie dereigner l'aquitance

<sup>1</sup> parmy B.    <sup>2</sup> covendroit B.    <sup>3</sup> foitz P; fietz M; forsque B.    <sup>4</sup> meen M.  
<sup>5</sup> done M.    <sup>6</sup> quia servicium est solum' des ten' issauntz B.    <sup>7</sup> Ins. par ceo bref M, B.    <sup>8</sup> et le bref abatist B.    <sup>9</sup> Text from Y (f. 188).    <sup>10</sup> Corr. distreint (?).



between the two vills—then the attornment on the proclamation could not be of one part of the service and not of another, but would have to be for the whole. And since it is a whole, it would follow that on this writ, in which only the one vill is named, an attornment would be made of the services due from the vill not named : which would be absurd.

*Denom.* Whereas you suppose that upon the proclamation we should attorn to the chief lord for the service which we did to you, which service is one and not partible between the two vills, that is not so ; but we should attorn for the service which you yourself did to the chief lord, which service is due only from the tenements in respect of which we demand the acquittance. Judgment.<sup>1</sup>

### III.

One A. brought his writ of mesne against Alice la Latimere and said that wrongfully she does not acquit him of services which John l'Estrange demands of her etc., for, whereas he holds of her tenements in Wyboston and [Eaton] by homage and fealty and by the service of five shillings, this [John] comes and distrains him etc.

*Passeley.* What have you to bind us to the acquittance ?

He produces a charter which showed that he held certain tenements of her in W. and E.

[*Passeley.*] And we pray judgment of the variance between your writ and the specialty, for your writ demands that we acquit you of the services of the tenements which you hold of us in W. and E.<sup>2</sup> by homage, fealty, and the service of five shillings ; and your specialty wills that we acquit you of the services which etc. of the tenements which you hold of us in W. and in E. by the service of five shillings. And we pray judgment whether, since you hold tenements in two vills by one service, you can deraign the acquittance against us of the tenements in W. without mentioning those in E., as they are held by one service etc.

*Miggeley.* Our plaint is founded upon our case, and we cannot make a plaint except upon what is our grievance, for otherwise our plaint would be false. And we are distrained only for the tenements which we hold in [W.]. Judgment, whether we ought not to be acquitted.

*Passeley.* I will prove that you cannot deraign an acquittance

<sup>1</sup> One book adds, and rightly, that the writ was abated.

<sup>2</sup> But 'and E.' should be omitted.

en la une ville sanz l'autre, e par ceste reson : si la proclamacion fut en ceo cas fet vers nous, nous ne perdriom mie les services entier pour le noun aquitance de les tenemenz en une ville. Par quei il semble a dereigner l'aquitance des tenemenz en une ville sanz fere mencion des tenemenz en l'autre ville, qe sunt tenuz par un service, ce serroit a severer les services, qe est un en sey com homage, qe serroit inconvenient de lei. Ergo etc.

*Huntingdone.* Tenance si est cause de service, e services si sunt cause de aquitance. Dount si jugement se freit sur l'aquitance des services, il se liereit enterement sur le homage et les v. sous de rente ; dount les tenemenz qe vous tenez en Wyboldistone e Hoghtone, les queux Alice la Latimere, vers qi vous biez dereigner ceste aquitance, tient de Johan l'Estrange en Wyboldistone, e de W. de C. en Hoghtone. Dount si jugement se freit sur l'aquitance des services qe owelement regardent le un ten[ement] e l'autre, le jugement se freit sanz gar[ant], car le bref ne voet mès aquitance des tenemenz en W., e vostre counte e vostre escrist voelt en la une ville e l'autre. E issi demandoms jugement de la variance.

*W. Denham.* Si Alice qe est ore venuz par la proclamacioun freit ore default, jugement serreit qe nous atturnassoms des services a Johan l'Estrange. E si altre foiz fuissoms destr[eint] de tenemenz en Hoghtone e nous demandisoms l'aquitance des avantdiz services vers Alice, il serreit bone r[espounse] a Alice a dire, 'Aquiter ne devons, car de ceux services sumes nous forjugez.' E issi le bref est gar[ant] al une ville e l'autre. Ergo etc.

*Pass.* Jeo rem' vostre reson encontre vous, qar ceux services sunt un, e sunt regardanz tenemenz en diverses villes, e dereigner l'aquitance en une ville sanz l'autre, ceo serroit encontre le purport de vostre especialté. Ergo etc.

*Hervi.* Nous entroms voz resons.

Et postea a die S. Hillarii in xv. dies, repetis<sup>1</sup> predictis racionibus —

*Ber.* Vous demandez estre aquitez des tenemenz qe vous tenez en Wiboldistone, e vostre counte voet en Wyboldistone e en Hoghtone.

*Laufare.* Nostre counte ne voet mès en Wyboldistone, coment qe nous moustroms coment nous tenoms en divers villes par un mesme service en diverses seignuries.

*Bereforde* cum ira dixit ad *Lauf.* : Quel heure del an comence vostre counte, malvois cheitif ? (*Laufare* non loquebatur unum

<sup>1</sup> *Corr.* repetitis.

in the one vill only : thus—If in this case a proclamation were made against us, we should not lose the whole services for the non-acquittance of the services in the one vill. So it seems that to deraign acquittance of the tenements in the one without mentioning those in the other, which are held by a single service, would be to sever the service, which is a single whole, like homage, and this would be an absurdity in law. Therefore etc.

*Huntingdon.* Tenancy is the cause of service, and services are the cause of acquittance ; so if judgment were made upon an acquittance of the services, it would bind the homage and the five shillings rent as one entire thing. And the tenements that you hold are in Wyboston and [Eaton], while Alice la Latimere, against whom you endeavour to deraign this acquittance, holds of John l'Estrange in Wyboston and of W. de C. in [Eaton]. ' So if judgment be made upon the acquittance of the services which equally belong to the one tenement and the other, it would be without warrant, for the writ only speaks of an acquittance of tenements in W., and your count and your writing speak of both villis. So we pray judgment of the variance.

*W. Denom.* If Alice, who has now come upon the proclamation, [had] now made default, the judgment would be that we should attorn for our services to John l'Estrange. And if another time we were distrained for the tenements in [Eaton], and we demanded against Alice an acquittance of the services, it would be a good answer for her to say, ' We are not bound to acquit you, for we have been forejudged of these services.' And so the writ is a warrant as to both villis. Therefore etc.

*Passeley.* I [turn]<sup>1</sup> your argument against yourself, for these services are one and they concern land in divers villis, and it would be against the purport of your specialty if you were to deraign an acquittance in one vill only. Therefore etc.

STANTON, J. We will enter your pleadings.

Afterwards in the quindene of Hilary, the pleadings having been rehearsed—

BEREFORD, C.J. You demand to be acquitted of the tenements that you hold in Wyboston, and your count says in Wyboston and [Eaton].

*Laufer.* Our count only says in Wyboston, although we show how we hold in divers villis by one single service in divers seignories.

BEREFORD, C.J. (in a rage, addressing *Laufer*) : At what moment of time<sup>2</sup> does your count begin, you wicked caitiff? (*Laufer* said

<sup>1</sup> We cannot expand *rem*'.

<sup>2</sup> Literally 'hour of the year.'

verbum.) Jeo quide qe primes devez eschorcher vostre bref e puis conter vostre counte. Mès primes escorchaung'<sup>1</sup> vostre bref vous demandez l'aquitance des tenemenz qe vous tenez en Wyboldistone, e puis contez qe vous tenez de lui tenemenz en la une ville e en l'autre, e de cele variance demandent il jugement.

*Hervi.* Il me semble si vous volez estre aqité q'il vous covent faire mencion en vostre bref del une ville e de l'autre, tut ne seiez vous destr[eint] del autre chief seignur etc.

Et sic recesserunt.

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 413, Bedford.

Alice la Latimer in mercy for divers defaults.

The same Alice was summoned to answer John Rungefer of a plea that she acquit him of the service which Geoffrey le Soke exacts from him for his free tenement which he holds of Alice in Wyboldestone,<sup>2</sup> whereof Alice, who is mesne between them, ought to acquit him. And thereupon John, by his attorney, says that, whereas he holds of her a messuage and the fourth part of a virgate of land with the appurtenances in the same vill and a messuage in the vill of Etone<sup>3</sup> by homage, fealty, and the service of three pence to the King's scutage of forty shillings when it shall occur and so in proportion, and by the service of four shillings a year, for which services Alice ought to acquit him against all men etc., Geoffrey distrains him for homage and the

#### 31. RAMESDEN v. ARNALD.<sup>4</sup>

Entré, ou bref fust porté vers ij. : l'un receu a prendre la tenaunce de l'entier par la defaute l'autre.

Un bref d'entré fust porté vers ij. dount l'un fist defaute ; par quei la moyté de la demaunde si fust pris etc. Al jour del graunt *cape* retourné si vient l'un et dyt qe par la defaute l'autre ne deveroit il avauntage avoir, qar il fust mesme tenaunt jour du bref purchacé del entier et est huy ceo jour, issint qe l'autre n'avoyt rien ; et prest fust a r[espoudre] del entier. Et fust a ceo r[eeu]. La partie counta vers luy. Et il demaunda la vewe. Et non habuit quia concessit quod fuit tenens de plano.

<sup>1</sup> *Corr.* en escorchaunt (?).

<sup>2</sup> Mod. Wyboston.

<sup>3</sup> Mod. Eaton Socon.

<sup>4</sup> Text from *A* ; compared with *D*, *T*. Headnote from *A*.



no word.) I take it that you ought first to skin<sup>1</sup> your writ and then to count your count. But first in skinning your writ you demand acquittance of the tenement that you hold in Wyboston, and afterwards you count that you hold of her tenements in both vills; and of that variance they demand judgment.

STANTON, J. It seems to me that, if you wish to be acquitted, you ought in your writ to make mention of both vills, albeit you are not distrained by the other chief lord etc.

And so they retired.

**Note from the Record** (*continued*).

service of two shillings for the tenements in Wiboldestone for default of Alice's acquittance etc.; damages, twenty pounds. And thereof he produces suit etc.

And Alice, by her attorney, comes and defends tort and force when etc.; and she says that she ought not to answer him to this writ to such a count etc.; for she says that John by his writ exacts the acquittance of service etc. for his free tenement in Wyboldestone and by his count he strives to bind Alice to acquit him of service etc. for his free tenement in Etone; [and] she prays judgment of the variance etc.

A day is given them to hear their judgment here on the morrow of the Purification, saving to the parties their reasons to be alleged on the one side and the other etc.

**31. RAMESDEN v. ARNALD.**<sup>2</sup>

Entry against two: one makes default; the other is received to defend for the whole; a view refused.

A writ of entry was brought against two. One of them made default. So the moiety of the demand was taken etc. On the day when the great *cape* was returned [the other tenant] came and said that [the demandant] ought to have no advantage by the default, since he himself [the speaker] was tenant of the entirety on the day of writ purchased and is so still, so that the other had nothing; and he offered to answer for the whole. And he was received to this. And the [other] party counted against him. And he demanded the view. But he did not have it, for he had plainly admitted his tenancy.

<sup>1</sup> Professor Maitland had hoped to offer some explanation of this in the Introduction to the volume.\*

<sup>2</sup> This case is Fitz. *View*, 148.

## Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 41, Essex.

John, son of John of Ramesdene, who is of full age, by his attorney, offered himself on the fourth day against Edmund, son of John Arnald, of a plea that he, together with Giles le Fraunceys and Alice his wife, should render him forty acres of land, twenty acres of pasture, and two parts of a messuage with the appurtenances in Ramesdene Creye and Burghstede,<sup>1</sup> which he claims as his right against him [Edmund] and the said Giles and Alice. And he [Edmund] does not come; and aforetime he made default here, to wit, on the quindenē of Easter last past, after he had appeared in court, so that the sheriff was then commanded to take a moiety of the tenements into the King's hand and to summon Edmund to be here at this day to hear judgment thereof; and the same day was given to Giles and Alice by their attorney here in the Bench. And the sheriff now witnesses that the land has been taken and that [Edmund] has been summoned.

And now come Giles and Alice, by their attorney, and say that they are tenants of the entirety of the tenements, and that Edmund has nothing, and that thereof they are ready to answer John; and they pray that they may be received to this. And they are received etc.

And John, who is of full age etc., by his attorney, demands against Giles and Alice the said tenements with their appurtenances in the said villis, [as those] into which Giles and Alice have no entry unless after the demise which John, while he was within age, made to John Arnald etc.

(*Note continued on opposite page.*)

32. ANON.<sup>2</sup>

Secta ad molendinum.

Nota la vewe fust demaundé en un bref de seute de molyn etc. Et non habuit per *Berr.* purceo qe c'est un bref ou nountenure ne poet estre alleggé ne homme ne poet pas voucher.

33. ANON.<sup>3</sup>

Wast.

Un bref de wast fust porté vers un baillif, qe fust chalengé et abatu par *Berr.* qe dit: Sy mon baillif fait<sup>4</sup> wast jeo luy chargerey sur soun accounte etc. Par ou le bref fust abatu. Ideo etc.

<sup>1</sup> Mod. Ramsden Crays and Burstead.<sup>3</sup> Text from *A*: compared with *D*, *T*.<sup>2</sup> Text from *A*: compared with *T*.<sup>4</sup> suyt *T*.

**Note from the Record—(continued).**

And Giles and Alice defend his right when etc.; and they say that the tenements with the appurtenances were once in the seisin of one William of Hameldon, who granted and demised to Alice, to hold for the term of her life of him and his heirs, rendering thence every year to him and his heirs during her life two marks; and they say that afterwards William granted the reversion of the tenements to Edmund, and that by reason of the grant Giles and Alice attorned for their service to Edmund; so they say that they hold the tenements in form aforesaid of the inheritance of Edmund, without whom they cannot bring the tenements into judgment; and they pray aid of Edmund.

Therefore be he summoned to be here on the octave of St. Hilary to answer together with them etc.

Afterwards at that day John and Giles and Alice came by their attorneys, and the sheriff sent no writ. Therefore, as before, the sheriff is commanded to summon Edmund to be here on the octave of Trinity. And be the sheriff [in mercy]. The same day here is given to the parties.

Afterwards, the process having been continued to the morrow of All Souls, in A.R. 5, come as well John son of John, by Henry of Snypestone his attorney, as Giles and Alice by Hamo of Waledene their attorney, and likewise Edmund in proper person. And he joins himself to Giles and Alice in answering. And a day is given here in the quindene of Easter by prayer of the parties without essoin. At which day came the parties. And a day is given here on the octave of Michaelmas by prayer of the parties without essoin.

**32. ANON.<sup>1</sup>**

Suit of mill. View.

In a writ for suit of mill a view was demanded. But BEREฟอร์ด, C.J., refused it, for this is a writ in which there can be no plea of non-tenure and no voucher.

**33. ANON.**

No action of waste against a bailiff.

A writ of waste was brought against a bailiff. It was challenged, and it was abated by BEREฟอร์ด, C.J., who said: If my bailiff does waste, I shall charge him upon his account etc. So the writ was abated. Therefore etc.

<sup>1</sup> This note is Fitz. *View*, 149. Not improbably it refers to the case in our vol. iii. p. 200.

34. ST. ANDREW *v.* STRETLE.<sup>1</sup>

Dette porté par executours ou relees le testatour fust mys en bare :  
eux receus a dedire le fait.

Exequutors porterent un bref de dette<sup>2</sup> et moustrerent avaunt le  
fait al defendaunt qe testmoigne la dette estre due al testatour.

*Lauf.* Vous ne poet accioun avoir, qe le testatour, qi executours  
etc., nous ad relessé etc., et par soun fait qe si est. Jugement etc.

*Willuby.* Nyent soun fait. Prest etc.

Et alii econtra. Ideo ad patriam.

## Note from the Record.

De Banco Rollis, Mich., 4 Edwd. II. (No. 183), r. 36, Bucks.

Hugh of Stretle was summoned to answer Thomas of St. Andrew, parson of the church of Claydon, and Alice, wife that was of Hugh of Tydemersh, executors of the testament of Hugh of Tydemersh, of a plea that he render to them one thousand pounds, which he wrongfully detains etc. And thereupon the executors say by Ralph of Braham and Thomas of Morton their attornies that, whereas Hugh of Stretle on [May 29, 1304] Friday next after the feast of St. Augustin, Apostle of the English, in 32 Edward [I.] at Kerselawe<sup>3</sup> had bound himself by his writing to be held to Hugh the defunct, whose executors [they are], in the said one thousand pounds to be paid to Hugh the defunct at Michaelmas then next, Hugh of Stretle did not render the said debt to Hugh the defunct in his lifetime, but has always hitherto detained it from the said executors and refuses to render it to them; and thereby they say that they are deteriorated and have damage to the value of two hundred pounds; and thereof they produce suit. And they proffer a writing obligatory under the name of Hugh of Stretle which witnesses the said debt etc.

And Hugh of Stretle comes and defends tort and force when etc.; and he confesses the writing to be his deed; but he says that the executors can exact nothing of the said debt by virtue of the writing; for he says that Hugh of Tedemersh, while he lived, by his writing (for a grant, remise, and quitclaim which John, son of Hugh of Stretle of Mentemore, made to Hugh of Tedemersh and his heirs of the manor of Kerselawe, to have and to hold to him and the heirs of his body lawfully begotten for ever, as in the

<sup>1</sup> Text from *A*: compared with *D*, *T*. Headnote from *A*.

<sup>2</sup> *Om.* de dette *D*.

<sup>3</sup> Mod. Creslowe, near Aylesbury.



34. ST. ANDREW *v.* STRETLE.

Debt. Executors are received to deny that a release is their testator's deed.

Executors brought a writ of debt and showed the deed of the defendant, which witnesses that the debt is due to the testator.

*Lauffer.* You cannot have action, for the testator, whose executors [you are], has released etc. by his deed, which is here. Judgment etc.

*Willoughby.* Not his deed: ready etc.

Issue joined. So to the country.

Note from the Record (*continued*).

writings bipartite made between them is more fully contained) for himself, Hugh, and his heirs and executors remised and altogether quitclaimed to Hugh [of Stretle] the whole debt of one thousand pounds in which Hugh [of Stretle] had been bound to Hugh of Tydemersh. And he proffers a writing under the name of Hugh of Tydemersh which witnesses the said remise and quitclaim. And thereof he prays judgment.

And the executors say that the writing which Hugh of Stretle here proffers under the name of Hugh the testator etc. ought not to impede them etc.; for they say that the writing is not the deed of Hugh the testator. And they pray that this be inquired by the country and by the witnesses named in the writing etc.

A *venire facias* for John Neyrnut and Robert Malet, knights, and [eleven others], and for twelve jurors is awarded for the octave of Hilary. And be it known that the said writing is delivered to J. Bacun, the King's clerk, for custody.

At that day came the parties by their attorneys and the sheriff did not send the writ. A *venire facias sicut prius* for witnesses and jurors is awarded for the octave of Trinity.

Afterwards, the process having been continued by a respite of the jury until this day, to wit, in the quindene of Trinity in 5[Edw. II.], Hugh of Stretle came and offered himself on the fourth day against the executors for the said plea. And they came not, and they had a day here by the respite of the jury. Therefore it is awarded that Hugh go thence without day, and that the executors and their pledges to prosecute be in mercy; and the said denied writing (*scriptum dedictum*) is delivered to Hugh here in court.

35. CARDEVILLE *v.* TRENCHFOIL.

Dower, ou abbé fust receu a deffendre soun droit ou le droit fust traversé: ou pert qe einz q'il seit receu il ne serra mye essonié ne purra faire atourné.

I.<sup>1</sup>

Une femme porta soun bref de dower vers un tenaunt qe fist defaute etc. issint qe lez tenemenz furent a perdre. Et survient un Abbé et dit qe la reversioun de mesme lez tenemenz a luy appendy etc. et pria d'estre receu. La femme si<sup>2</sup> countrepleda, qe dit qe la revercioun n'appendoyt a luy. Et furent a issue sur certeyn point de la receite et en averement du pays avoient jour. A quel jour l'Abbé se fist essonier. Et ne fust pas alowé, pur ceo q'il ne fust pas partie avaunt q'il fust r[eceu].<sup>3</sup> Et pus se proffri par attorné. L'attourné nyent allowé, pur ceo qu'il ne fust pas receu nec *per consequens* partie al plee. Par quei lez justices alerent a jugement sur la defaute, non obstante quod placitaverunt ad inquisitionem de recepcione, et agarderent a la femme demaundaunte seisine de terre. Et l'Abbé en la mercey pur sa destourbaunce etc.

II.<sup>4</sup>

En un bref de dower le tenaunt fit defaute.<sup>5</sup> Et survynt l'Abbé del la Hyde,<sup>6</sup> et dit qe cely tynt de ly a terme de sa vie et qe la revercioun fut a ly par reson de purchas. Et la femme demaundaunt dit qe la revercioun etc. qe cely ne se attourna unques. Et de ceo joynt enqueste.<sup>7</sup> Al jour qe l'enqueste etc., l'Abbé r[espondy]<sup>8</sup> par attourné; qe fut challengé pur ceo q'il ne pout attourné fere eynz ceo q'il fut partie au plee, et de l'oure q'il ne fut poynt avant etc. receu etc. Par qey fut agardé par *Berr.* et *Hervi* qe l'attourné en ceo cas ne git poynt avaunt etc. et qe la demaundaunte etc. recoveri etc., et ust bref a vicounte d'enquere des issues en le meyn temps, pur ceo qe l'Abbé trova surté etc.<sup>9</sup> statut etc.

Set contrarium factum fuit de Cancelario et Universitate<sup>10</sup> Oxonie

<sup>1</sup> Text from *A*: compared with *D*, *T*. Headnote from *A*. <sup>2</sup> lui *D*.  
<sup>3</sup> q'il r' *T*. <sup>4</sup> Text from *R*: compared with *M*, *P*. <sup>5</sup> *Ins.* apres defaute *M*, *P*.  
<sup>6</sup> del Lande *M*. <sup>7</sup> en que *R*; se joynt en enqueste *M*; enquest se joynt *P*  
<sup>8</sup> apparust *M*, *P*. <sup>9</sup> par *M*, *P*. <sup>10</sup> *Om.* et Universitate *M*.

35. CARDEVILL *v.* TRENCHFOIL.<sup>1</sup>

An intervener cannot essoin himself or appear by attorney before he has been received, though he has already pleaded to issue on a question of fact.

## I.

A woman brought her writ of dower against a tenant who made default etc. so that the tenements were on the point of being lost. An Abbot intervened, and said that the reversion of the tenements belonged to him etc., and prayed to be received. The woman counterpleaded him, saying that the reversion did not belong to him. They were at issue on a certain point about the receipt, by an averment of the country; and they had a day. At that day the Abbot had himself essoined. [The essoin] was not allowed, as before receipt he was not a party [to the action]. Afterwards he offered himself by attorney. The attorney was not allowed, as [the Abbot] was not [yet] received, and therefore was no party to the plea. So the justices went to judgment on the default, notwithstanding that there had been pleading to an inquest as to the receipt; and they awarded seisin of the land to the demandant; and the Abbot in mercy for his disturbance etc.

## II.

In a writ of dower the tenant made default. The Abbot of Hyde intervened and said that [the tenant] holds of him for term of life and that the reversion is his by reason of purchase. And the demandant said that the reversion [did not belong to him], as [the tenant] never attorned. On this inquest was joined. On the day for the inquest the Abbot answered by attorney. This was challenged on the ground that he could not make an attorney until he was party to the plea, and since he was not yet received, he was not party. Therefore it was awarded by BEREฟอร์ด, C.J., and STANTON, J., that an attorney in this case [is not admissible]<sup>2</sup> before [receipt], and that the demandant recover and have a writ to the sheriff to inquire as to the issues of the mean time, for which the Abbot had found surety [according to] Statute.<sup>3</sup>

But<sup>4</sup> the contrary was done in the case of the Chancellor and

<sup>1</sup> Proper names from the records, of which notes are printed in the Appendix. *iuris* ('Statutes of the Realm,' vol. i. p. 110).

<sup>2</sup> Literally 'does not lie.'

<sup>3</sup> Stat. 20 Edw. I. *de defensione*

<sup>4</sup> This note is not in all our books.

qui fecit attornatum antequam admittebantur.<sup>1</sup> Et hoc factum fuit per commune consilium, et tota Universitas non potuit venire<sup>2</sup> etc.<sup>3</sup>

### III.<sup>4</sup>

Une Margerie qe fu femme C. porta son bref de dowere vers l'Abbé de la Hyde de la terce partie de un mees etc., et vers Alice qe fu la femme H. de la terce partie de xl. acres de terre. L'Abbé de sa tenance demanda la vewe; 'et fut ajorné de leindemein de Seint Johan tanqe a moys de Seint Michel ore. Alice a mesme terme de Seint Johan fist defaute après defaute.

*Touth.* L'Abbé vous dist qe la reversion de ceux tenemenz si est le droit de sa eglise, dount H. jadis baroun A[lice] de l'assent le Roy dona etc. (Et mist la chartre H. de doun et la chartre le Roy de l'assent.)

Margerie dit qe nul dowere a A[lice] ne assigna, ne Alice a lui ne a nul de ses predecessours se atturna, issi qe droit de reversion a lui ne a sa eglise acrestre poet: prest del averrer.

Et Abbas contrarium. Et super hoc dies datus est in mense Sancti Michaelis. Quo die Abbas fuit essoniatus de tenura sua. Et qaunt a la tenance Alice l'Abbé fut demandé et ne vient nent einz une<sup>5</sup> atturné se proffit pur lui.

*J. Denham.* L'Abbé ne puet nul atturné avoir, qar il n'est pas resceu a defendre la tenance Alice, issi nent partie a nous. Et demandoms jugement de la defaute après defaute qe Alice fist a la terme de la Trinité.

*Hervi.* Demandez l'Abbé de la Hyde.

Il ne vient nent.

*Bereford* a l'atturné. Vous poez estre atturné qaunt a la demande qe M[argerie] fet vers l'Abbé mesme; mès tanqe l'Abbé soit resceu il ne puet atturné avoir.

*Hervi* rehercea tut le procès et dit: Pur ceo qe l'Abbé autrefoiz vient en ceste court et pria estre receu a defendre sun droit et ore fet defaute, si agard la court qe M[argerie] rescovere vers Alice sa demande par sa defaute, et l'Abbé en la merci. Et pur ceo qe l'Abbé par forme del statut trova plegges del meen temps, suie M[argerie] bref pur avoir les issues del meen temps.

<sup>1</sup> admittebatur *M.*      <sup>2</sup> *Rep.* venire *R.*      <sup>3</sup> *Om.* et . . . etc. *M*; *om.* the whole note *P.*      <sup>4</sup> Text from *Y* (f. 140).      <sup>5</sup> Sic *Y.*



University of Oxford who made an attorney before receipt. And this was done by the common counsel [of the University?], and the whole University could not come etc.

### III.

One Margery, wife that was of C., brought her writ of dower against the Abbot of Hyde for the third part of a messuage etc. and against Alice, wife that was of H., for the third part of forty acres of land. The Abbot, as to his tenancy, demanded the view, and was adjourned from the morrow of St. John until now, a month from Michaelmas. At the same term of St. John, Alice made default after default.

*Toudeby.* The Abbot tells you that the reversion of these tenements is the right of his church, which H., sometime Alice's husband, gave by the King's assent etc. (And he produced H.'s charter of gift and the King's charter of assent.)

*Margery* said that he never assigned dower to A[lice], and that A[lice] did not attorn to him or to any of his predecessors in such wise that the right of the reversion could accrue to him or his church: ready to aver it.

Issue was joined. Thereupon a day was given in a month from Michaelmas. On that day the Abbot was essoined as to his own tenancy. And as to Alice's tenancy, the Abbot was called but did not come; but an attorney proffered himself for him.

*J. Denom.* The Abbot can have no attorney, for he is not [yet] received to defend Alice's tenancy, and so is no party to us. We pray judgment of the default after default made by Alice in Trinity term.

STANTON, J. Call the Abbot of Hyde.

He did not come.

BEREFORD, C.J., to the attorney. You can be attorney so far as concerns the demand that M[argery] made against the Abbot himself; but until the Abbot is received he can make no attorney.

STANTON, J., rehearsed the whole process and said: As the Abbot aforetime came into this Court and prayed to be received to defend his right, and now he makes default, the Court awards that M[argery] recover her demand against Alice for her default, and that the Abbot be in mercy. And as the Abbot, according to the form of the Statute,<sup>1</sup> found pledges for the mean time, let M[argery] sue a writ to have the issues of the mean time.

<sup>1</sup> See note 3, p. 138.

36. INGELOSE *v.* SPYTLING.

Assise ou si jeo relese moun joint purchaz a moun joint purchasour deinz age, il aliene tut entier jeo deinz age, et soy ousté, jeo n'avera qe la moieté par assise.'

I.<sup>1</sup>

Deux friers purchacerant certeynz tenemenz jointement, l'un deynz age l'autre de pleyne age. Le pusné relessa al eygné. Et pus l'eigné aliena l'entier a un estraunge. Le pusné deynz age entra.<sup>2</sup> L'estraunge luy ousta. Par quei il porta l'assise de novele discisine et mist en sa pleynte l'entier. Et plederent al assise, qe counta tot le fait et prièrent eyde des justices. Les justices ajornerent les parties<sup>3</sup> en bank d'oyer lour jugement; ou fust agardé par *Berr.* qu'il recoveyrt la moyté etc.

II.<sup>4</sup>

Thomas Ingelous porta une assise etc. vers un Rogier et Agnes sa femme et Jon Tokyn et Johan Trayt. Rogier et Agnes r[espondirent] par baillif qe eux ne clamerent rien ne nul tort etc.

{ Thomas<sup>5</sup> Ingelus porta bref vers Rogier et Agnes sa femme Johan Tekeleyn<sup>6</sup> et Johan Trayt. Johan Tekeleyn et Rogier vindrent et noun pas les autres, Rogier par baillif et dit q'il rien n'avoit etc.<sup>7</sup> Rogier r[espondy] com tenaunt et dit q'il fit nul tort, q'il entra par Johan Tekeleyn<sup>8</sup> q'est prest a garr[auntir] et rien ne dit par qei etc.<sup>9</sup> Ideo capiatur assisa.<sup>10</sup> }

L'assise dit qe un Rauf et Maude sa femme, Jon Ingelous et T. son frere purchacerunt ceu mies etc., dount l'assise etc., a avoir et a tenir a eux et a lors<sup>11</sup> heirs. Jon et<sup>12</sup> Thomas<sup>13</sup> après la mort Rauf et Maude. Thomas esteant del age de xvj. aunz relessa et quiteclama a Jon<sup>14</sup> frere tot le droit q'il avoit en cel mies.<sup>15</sup> Pus denz les iij. symayns après T.<sup>16</sup> oit dire qe Jon<sup>17</sup> frere voleynt vendre cel mies. Vynt<sup>18</sup> et ceo<sup>19</sup> myst eynz. Jon son frere jalemeyns le vendy a Jon

<sup>1</sup> Text from *A*: compared with *D*, *T*. Headnote from *A*. <sup>2</sup> *Om.* entra *T*.  
<sup>3</sup> le proces *D*. <sup>4</sup> Text from *R*; compared with *M*, *P*, *B*. <sup>5</sup> Text from *M*: compared with *P*. <sup>6</sup> Elm' *P*. <sup>7</sup> *R.* et *J.* vyndrent en court en propres personnes, les autres par bayliff et disoyent qe riens navoyent en etc. *P*. <sup>8</sup> Cokyn *P*. <sup>9</sup> gar' qe dit qil fit nul tort *P*. <sup>10</sup> assisam *M*. <sup>11</sup> les *M*. <sup>12</sup> *Om.* et *M*. <sup>13</sup> *Ins.* seisi *B*. <sup>14</sup> *Ins.* son *M*, *B*. <sup>15</sup> *Ins.* et ala servir a Jernemuthe *M*. <sup>16</sup> il *M*. <sup>17</sup> *Ins.* son *M*. <sup>18</sup> et revynt *M*, *B*. <sup>19</sup> se *M*, *B*.

36. INGELOSE *v.* SPYTLING.<sup>1</sup>

Two joint tenants; one under age released to the other. It was adjudged an utterly void release.

## I.

Two brothers purchased certain tenements jointly: the one within age, the other of full age. The younger released to the elder. Then the elder alienated the whole to a stranger. The younger entered while within age. The stranger ousted him. So he brought the assize of novel disseisin, and put the whole in his plaint. They pleaded to the assize. It told all the facts and prayed aid of the justices. They adjourned the parties into the Bench to hear their judgment. And there it was awarded by BEREฟอร์ด, C.J., that [the plaintiff] recover the moiety.

II.<sup>2</sup>

Thomas Ingelous brought an assize etc. against Roger and Agnes and John Tokyn and John [le Whyte]. Roger and Agnes answered by bailiff that they claimed nothing and had done no tort etc.

{Thomas<sup>3</sup> Ingelus brought a writ against Roger and Agnes his wife, John [Tokyn] and John [le Whyte]. John Tekelyn and Roger came in person; and the others came by bailiff and said that they had nothing. Roger answered as tenant and said that he had done no tort, but entered by John Tekelyn, who is ready to warrant; and he said nothing to show that the assize [should be deferred.] So let the assize be taken.}

The assize said that one Ralph and Maud his wife, John Ingelous and T. his brother purchased this messuage, whereof the assize [is summoned], to have and hold to them and their heirs. After the death of Ralph and Maud, John and Thomas were seised. Thomas, being of the age of sixteen years, released and quitclaimed to his brother John all the right that he had in the messuage.<sup>4</sup> Then within three weeks afterwards T[homas] heard that J[ohn], his brother, was about to sell the messuage. He came and put himself in. None the less John his brother sold it to John Tokyn, who expelled Thomas. And [the

<sup>1</sup> Proper names from the record of which a note is printed in the Appendix. This case is Fitz. *Reless*, 49. Our head-note is Fitzherbert's statement.

<sup>2</sup> This version is given in the Old Edition, p. 84. All the texts that give

it are obscure. In translating it we are compelled to follow first one text and then another.

<sup>3</sup> An alternative statement.

<sup>4</sup> One book adds 'and went to serve at Yarmouth.'

Tokyn qe debota etc.<sup>1</sup> Thomas. Et prierent discr[ecioun] etc.<sup>2</sup> Et super hoc partibus hic adiornatis—

*Toud.* Vous veet qe trové est etc. qe Thomas relessa etc. a Jon, le quel Thomas adonqe pout releusser etc.<sup>3</sup>

*Berr.* Tut relessa, il ne le feffa pas; dount il ne<sup>4</sup> serra pas<sup>5</sup> pur cel fet mis a sa actioun, et tot par<sup>6</sup> l'assise qe fut procuré de cel relees, il ne vous vaudra<sup>7</sup> nient.

*Toud.* Certes a tot le mayns de la moyté il ad faillé.

*Berr.* Ce ne vous dy jeo pas, qe si l'un voleint<sup>8</sup> de cel joyn-tenaunce avoir levé fyn poeit il reclamer autrefeze (*quasi diceret noun*)?<sup>9</sup>

{*Toud.*<sup>10</sup> Non est simile de chose my en fet<sup>11</sup> en pays et qe est a mettre en fet par fin,<sup>12</sup> qe en moult des lees une chose mis en<sup>13</sup> fet<sup>14</sup> par feffement<sup>15</sup> ne sount defessables, et cy ne put pas lever fin en teu cas.<sup>16</sup>}

*Hervi.* Tot fit Thomas relès, il ne enfeffa pas, ne pur cel relès il ne deit pas estre mis a autre actioun, qe ceo est pur ceo qe<sup>17</sup> le relees qe Jon avoit de Thomas n'avoit Jon nul estat mès qe en<sup>18</sup> la meité<sup>19</sup> et de l'autre meité disseisi Thomas son frere, par quele disseisine Jon Tokyn<sup>20</sup> est ore tenaunt et Jon Tweyt<sup>21</sup> disseisour; <sup>22</sup> si agarde etc. qe Thomas recovere sa seisine etc. de la meité sur J. et J. et ipsi in misericordia.<sup>23</sup>

### III.<sup>24</sup>

Nota ou deus freres purchacerent une carué de terre jointement, e pus le frere eigné purchase une quiteclamance de pusné, e pus aliena cele carué de terre a un estrange. Le eigné frere devie. Le pusné entre les tenemenz. Le estrange e altres lui ousterent. E il porta l'assise de novele disseisine. Le tenant ne plede nent a la quiteclamance pur le fet fete dedeinz age e pur altres perils *ut patet intuitu*;

<sup>1</sup> qi estat *M*; qe ousta *B*. <sup>2</sup> *P* simplifies the verdict by omissions. <sup>3</sup> Johan qe piert par ceo fet qe Thomas lui fit frere et Thomas serreit a saccioun et demaundoms jugement *M*; *sim. P. but om.* frere; relessa a *J.* qe poeit a adounqe par ceo fait qe *T.* lui fit avoir barre *T.* sil fuist a saccioun, jugement *B*. <sup>4</sup> *Om.* ne *M*. <sup>5</sup> *Om.* pas *M*. <sup>6</sup> passa *P*; parle *B*. <sup>7</sup> rendra *M*. <sup>8</sup> voloit *M*; voleit *P*; voilleit *B*. <sup>9</sup> fin poynt reclame lautre noun *M*; fyn serroit ceo receu q. d. non *P*; fyn poit autre foie etc. *B*. <sup>10</sup> Text from *M*: compared with *P*, *B*. In *R* an omission spoils the sentence. <sup>11</sup> *Ins.* par le f[effement] *P*. <sup>12</sup> pays et de chose mys par fyn en court *P*. <sup>13</sup> qe mouz des choses mys en *P*; qen moultz des choses mis en *B*. <sup>14</sup> *Ins.* sount *P*. <sup>15</sup> *Ins.* qe *P*; fet par fyn *B*. <sup>16</sup> et si ceo nest pas de lour fin en ceo cas *B*. <sup>17</sup> *Ins.* par *M*. <sup>18</sup> estat si noun de *P*; estat forsque de *B*. <sup>19</sup> estat immediate *M*. <sup>20</sup> Tokelyn *M*. <sup>21</sup> Trayt *M*. <sup>22</sup> disseisi *M*. <sup>23</sup> moyte vers Johan et Johan et *J.* en la mercy *M*; moyte et Johan in misericordia *P*. <sup>24</sup> Text from *Y* (f. 35d).



jurors] prayed the opinion [of the justices]. Thereupon the parties were adjourned here.

*Toudeby.* You see that it is found that Thomas released to John, who thereafter could by Thomas's deed have barred Thomas from his action if he had been bringing one.<sup>1</sup>

BEREFORD, C.J. Albeit he released, he did not enfeoff; so by this deed he is not put to his action; and, though the assize, which was procured,<sup>2</sup> spoke of this release, it will avail you nothing.

*Toudeby.* Well, at the very least he has failed as regards a moiety.

BEREFORD, C.J. I do not say that, for if the one of these joint tenants wished to levy a fine, would he be received to that?

*Toudeby.*<sup>3</sup> There is no similitude between a thing that has been done in the country and one that is yet to be done by fine; for many things that are done by feoffment are not defeasible, and yet the Court would not suffer them to be done by fine.

STANTON, J. Although Thomas made a release, he did not enfeoff; and by reason of this release he ought not to be put to another action;<sup>4</sup> and this is so because John, by the release that he had from Thomas, had no estate save in a moiety, and of the other moiety he disseised Thomas his brother; and by this disseisin John Tokyn is now tenant and John [le Whyte] is disseisor. Therefore [this Court] awards that Thomas recover his seisin etc. of the moiety against J[ohn] and J[ohn], and that they be in mercy.<sup>5</sup>

### III.

Two brothers jointly purchased a carucate of land. Then the elder brother purchased a quitclaim from the younger, and then he alienated this carucate to a stranger. The elder died. The younger entered the tenements. The stranger and others ousted him. Then he brought an assize of novel disseisin. The tenant did not plead [upon] the quitclaim because the deed was made within age and because of other dangers which will appear to an observer; but he vouched to warrant one P. who was named in the writ. P. warranted

<sup>1</sup> At this point the text is very dubious.

<sup>2</sup> Whether this word is used in a bad sense seems uncertain.

<sup>3</sup> Here again the text is obscure.

<sup>4</sup> Other than the novel disseisin.

<sup>5</sup> The award of the court is not correctly stated. See the Note from the Record printed in the Appendix.\*

mès vouche a garant un P. qe est nomé en le bref. P. gar[antit] e dist q'il ne feust unqes seisi. L'assise vient e counte le fet *ut supra*. Les justices [d']assise maund[ent] record en Bank.

*Herry* fist demander les parties et dist : Pur ceo qe trové est par verdit d'assise qe le purchaz se fist a A. e B. [son] frere jointement, e coment qe A. purchacea de B. dedeinz age quiteclamance, qe rien ne valt, e trové est qe A. aliena teux tenemenz a C., e trové est qe P. e C. diss[eisirent] B., e qe P. gar[antit] C., si agarde la court qe B. rescovere la moieté de cele, carué de terre e ses damages vers C., e C. a la value vers P., e C. e P. en la merci.

Ego quesivi diligenter si tenent suam medietatem coniunctim vel separatim. Nunquam inveni duos narratores sub uno dicto etc. Item *Robert Sturry* me dist qe il ly avoit debat entre Sire W. de Leyborne e Sire Robert de Burgeisse, e unkes par nu conseil ne poeit il avoir remedié en ceo cas. *Ridynal* hoc idem dixit.

## 37. SHINEHOLT v. MALDUS.

Mordauncestre, ou pert qe mesqe l'assise fust agardé et prise par defaute le baroun, la femme devaunt jugement rendu seyt receu, et auxi en le bref de droit après mise de graunt assise, tut fust l'assise prest a passer a la bare.

Un Adam porta un assise de mortdauncestre devaunt justices assignez etc. vers R. de C. et E. sa femme; les queux mistrent avaunt une quiteclamaunce etc., qe fust dedit; par quei les parties furent ajournez en baunk<sup>2</sup> certeyn jour; a quel jour le baroun fist default la quele fust recordé<sup>3</sup> des justices. Al tierce jour si vient la femme et dit qe le bref fust porté vers luy et vers soun baroun<sup>4</sup> et pria d'estre receu en defaute de soun baroun a defendre soun droit.

*Herle*. R[eceu] ne devez estre, qe vous n'estes mye en cas de statut, qe dit qe la ou les tenemenz sount a perdre etc. Mez nous ne<sup>5</sup> prioms jugement final, einz prioms l'assise, qe poet auxi bien chaunter pur luy com pur nous; jugement si en ceo cas deive estre receu.<sup>6</sup> Et d'autrepart nous entendomps q'il n'y ad nul meen temps entre le record<sup>7</sup> de la defaute et le jugement; et<sup>8</sup> le baroun et luy

<sup>1</sup> Text from *A*: compared with *D*, *T*. Headnote from *A*. <sup>2</sup> *Ins.* a *D*, *T*.  
<sup>3</sup> acorde *T*. <sup>4</sup> *Om.* to after next baroun *T*. <sup>5</sup> *Om.* ne *D*. <sup>6</sup> *Om.* receu *A*;  
*ins.* *D*, *T*. <sup>7</sup> recorder *D*. <sup>8</sup> mes *D*, *T*.

and said that [the plaintiff] was never seised. The assize came and told the facts as above. The justices of assize sent the record into the Bench.

STANTON, J., had the parties called and said: For that it is found by verdict of the assize that a purchase was made by A. and B. his brother jointly, and [then] A. purchased a quitclaim from B. within age, which was worth nothing, and it is found that A. alienated these tenements to C. and that P. and C. disseised B., and that P. warranted C., therefore this Court awards that B. recover the moiety of this carucate and his damages against C., and that C. [recover] an equivalent against P., and C. and P. be in mercy.<sup>1</sup>

I have diligently inquired if he [B.] holds his moiety jointly or severally. Never found I two pleaders of one opinion. Also Robert Sturry told me that there was a debate between Sir W. de Leybourne and Sir R. Burgersh, and never by any counsel could he have remedy in this case. Ridynal said the same.

### 37. SHINEHOLT *v.* MALDUS.

Mortdancestor against husband and wife. On the husband's default the wife may be received although the assize has not yet passed, and also although a default by husband and wife has been recorded.

One Adam brought an assize of mortdancestor before justices assigned etc. against R. de C. and E. his wife. They produced a quitclaim etc. which was denied. Therefore the parties were adjourned into the Bench on a certain day. At that day the husband made default, which was recorded by the justices. On the third day<sup>2</sup> came the wife and said that the writ was brought against her and her husband; and she prayed to be received on her husband's default to defend her right.

*Herle.* You ought not to be received, for you are not in the case of the Statute. It says 'where the tenements are about to be lost etc.'<sup>3</sup> But here we are not praying a final judgment, but are praying the assize, which might chant either for [you] or for us. Judgment, whether in this case [you] should be received. Again, we understand that [in law] there is no mean time between the record of the default and the judgment; and on Friday your husband and you

<sup>1</sup> See p. 141, note 5.

<sup>2</sup> It was a day after the *dies quartus*. See our Note from the Record.

<sup>3</sup> Stat. Westm. II. c. 3.

vendredy si furent solempnement demaundez et lour absence recordé. Par quei nous entendoms d'estre en mesme l'estat qe nous sumes<sup>1</sup> adonqe, et prioms l'assise auxi com par lour defaute; qar si le jugement fust rendu sur le prendre del assise, trop tard vendreit<sup>2</sup> ele après a prier d'estre receu.

*Ber.* Ele est venu avaunt jugement, et l'assise nyent agardé. Mez si vous quydez estre en mesme l'estat com si le jugement eust esté rendu etc., eydez vous par la etc., qar mesqe l'assise fust agardé et le jugement nyent rendu, unqore serroit ele receu; qar j'ai veu après mise de graunt assise ou ele fust prest a passer, qe la femme fust r[eceu], et ceo fust graunt meschief.

Et fust receu etc.

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 65, Surrey.

Heretofore, before William Inge and Henry of Cobbeham, justices assigned to take assizes in the county of Surrey at Lambthuthe<sup>3</sup> on [June 29, 1310] Monday next after the quindene of the Holy Trinity in A.R. 3, an assize came to find whether Henry of Shineholt, brother of Adam of Shineholt, was seised in his demesne as of fee of a messuage, a mill, a carucate of land, three acres of meadow and five acres of wood, with the appurtenances, in Norhtlambthuthe on the day on which [he died], which Reginald Maldus of Thunderle and Margery his wife hold. And they came and said that Adam could claim no right in the tenements; for they said that the tenements were at one time in the seisin of one Martin of Aumbresbury, who thereof enfeofed Reginald and Margery; and that, the tenements being in Martin's seisin, Adam remitted and quitclaimed to Martin and his heirs and assigns for ever all right and claim that he had in the tenements, by a certain writing of quitclaim, which Reginald and Margery produced under Adam's name, and which witnessed this; and they prayed judgment whether Adam can claim any right or [make any] claim in the tenements against his deed.

And Adam said that the writing ought not to hurt him, for he said that it was never his deed; and of that he put himself upon the witnesses named in the writing, to wit, [six names] and upon the country.

And because the writing witnesses that it was made in the city of London, a day was given them here at this day, to wit, the quindene of St. Michael, and the sheriffs of London were commanded to cause to come here [five names] witnesses from the said city and, besides them, twelve etc., by whom etc., and who neither etc., to find etc., because both etc.; and likewise the sheriff of Surrey was commanded to cause to come here etc. [the sixth witness] to find along with etc. (*Note continued on opposite page.*)

<sup>1</sup> fumes *D.*

<sup>2</sup> vendra *D.*

<sup>3</sup> Mod. Lambeth.



were solemnly called and your absence was recorded. So we hold that we are in the same condition in which we were then; and we pray the assize as upon their default; for if a judgment were given as to the taking of the assize, [you] would then be too late if you came and prayed to be received.

BEREFORD, C.J. She has come before judgment, and the assize has not been awarded. But if you think that you ought now to be in the same condition as if judgment [for the taking of the assize] had been rendered, see whether that would aid you. Even if the assize had been awarded and the [final] judgment had not been rendered, still she would be received. I have seen a woman received after a mise to the grand assize and when it was ready to pass; and that was a great hardship.

**Note from the Record** (*continued*),

And now comes Adam and offers himself on the fourth day of the said quindene against Reginald and Margery of the said plea etc. And they did not come, so that, the process upon the default being continued to the morrow, Adam comes and Reginald comes not. But Margery comes and prays that the default of her husband be not prejudicial to her, as she is ready to answer him [Adam] thereof etc., and she prays to be received by the Statute.

She is received etc. And she says that Adam can claim nothing in the tenements; for she says that, they being in the seisin of Martin, who thereof enfeoffed her together with her husband, Adam by the said writing remitted and quitclaimed to Martin and his heirs and assigns all the right that he had in the tenements; and she prays judgment etc.

And Adam says that the writing should not prejudice him etc.; for he says that it is not his deed; and he prays that this be inquired by the said witnesses and a jury.

A *venire facias* is awarded for the quindene of St. Martin.

[At that day the parties came, and the jury was respited for default of jurors and witnesses. A *habeas corpus* was awarded.]

And thereupon comes Thomas Palmer, attorney of the Mayor and Aldermen of London for challenging their liberties, and says that the said witnesses are citizens of the said city etc., who ought not to come outside the city in any inquests etc.; and thereof he challenges the liberty etc. Therefore etc.

Afterwards, on the octave of the Purification in the said year, comes Margery here, and Adam of Shenholte comes not. Therefore let Margery go thence without day, and be Adam in mercy etc. And be it known that the said writing is redelivered to Margery here in the Bench etc.

38. STIRKELAND *v.* WARD.

*Cui in vita*, ou jeo serra mye tolet la vewe a bref de mesme la nature ou l'accioun est usé de droit plus tardif, tut alege il qe jeo l'avoy a autiel bref.

I.<sup>1</sup>

Une femme porta soun *cui in vita* ou le tenaunt demaunda la vewe.

*Denom.* La vewe ne devez avoir, qar avaunt ceste houre si portames autiel bref vers vous mesme, en le quel bref vous avetz<sup>2</sup> la vewe de eisdem tenementis. Jugement, si ore de mesme lez tenemenz dount etc. devez la vewe avoir.

*Hedoun.* Quel issue prist ceo bref ?

*Denom.* Le tenaunt dit qe nostre baroun fust adonqe en vie etc., par ou nostre bref se abatist après vue. Jugement etc.

*Berr.* Purceo qe statut ne luy toud<sup>3</sup> mye la vewe d'accioun q'est acreu de plus tardif temps, et cest accioun luy est puis acru par la mort soun baron, qi aliena, ut dicit, eit la vewe.

II.<sup>4</sup>

Le tenaunt en un *cui in vita* demaunda la vewe; ou respondu fut qe au bref de mesme la nature entre mesmes les persones autrefeze avoit la vewe, le quel bref se abati pur ceo qe vostre baroun fut en pleyne vye : jugement si ore etc.<sup>5</sup>

*Berr.* Si vous li volez oster de la vewe, ceo covent estre par statut. Mès statut ne<sup>6</sup> fet mencion mès<sup>7</sup> ou bref se abati par exceptioun dilatorie; et le premir bref ou vous dites qe il avoit la vewe se abati par exceptioun al actioun, pur ceo qe son baroun fust en pleyne vye; la quele exceptioun fut paremptorie<sup>8</sup> *pro tempore viri*, et par consequent hors de cas de statut.

Ideo habuit etc.<sup>9</sup>

III.<sup>10</sup>

Un A. porta sun bref d'entré vers B. B. demanda la vewe.

*Denham.* La vewe ne devez avoir, car autrefois portames mesme

<sup>1</sup> Text from A; compared with D, T. Headnote from A. <sup>2</sup> aviez T.  
<sup>3</sup> tend A; tout T; toude D. <sup>4</sup> Text from R; compared with M, P. <sup>5</sup> la  
vewe devez avoir P. <sup>6</sup> Om. ne M. <sup>7</sup> Om. mes M; si noun P. <sup>8</sup> parencor'  
R; paremptor' M, P. <sup>9</sup> visum M, P. <sup>10</sup> Text from Y (f. 94b).

38. STIRKELAND *v.* WARD.<sup>1</sup>

A demandant may have a view though he has already had one in a previous action, if that action failed on a plea in bar, not a plea in abatement.

## I.

A woman brought her *cui in vita*. The tenant demanded the view.

*Denom.* You ought not to have the view, for before now we brought a like writ against you, and then you had the view of these same tenements. Judgment, whether you ought now to have a view of the same tenements etc.

*Hedon.* What was the issue of that writ?

*Denom.* The tenant said that our husband was still alive etc., and so our writ abated after the view. Judgment etc.

BEREFORD, C.J. As the Statute<sup>2</sup> does not deprive him of the view in an action which accrued later [than the previous action], and this action accrued on her husband's death, therefore let him have the view.

## II.

The tenant in a *cui in vita* demanded the view. It was answered that there had been a writ of the same nature between the same persons where there had been a view, and that the writ abated because [the demandant's] husband was living. Judgment, whether now [you should have a view].

BEREFORD, C.J. If you wish to oust him from the view, that must be by Statute. But the Statute only mentions the case where a writ is abated by a dilatory 'exception.'<sup>3</sup> But here the former writ, on which you say he had the view, was abated by an 'exception' to the action, since her husband was alive. And that 'exception' was peremptory so long as he was living. Thus it is outside the Statute.

So he had [the view].

## III.

One A. brought a writ of entry against B., and B. demanded the view.

*Denom.* You ought not to have the view; for aforetime we

<sup>1</sup> This case is Fitz. *View*, 147. The record of which a note is given below does not precisely fit the first two of our three reports.

<sup>2</sup> Stat. Westm. II. c. 48.

<sup>3</sup> Stat. Westm. II. c. 48: 'per exceptionem dilatoriam.'

cel bref vers vous et vous aviez la vewe. Jugement si au bref de mesme la nature ore la vewe devez avoir.

*Scrop.* Verité est qe altrefoitz portames bref vers vous, a queu bref nous avioms la vewe, e après vewe demandé le bref s'abatist par la r[eson] qe celui par qi le lees se fist fuist en pleine vie. Et demandoms jugement si a cestui bref ore ne devons la vewe avoir.

*Ber. a Denham.* Il vous dient qe le primer bref s'abatist par exception qe chiet al action e nent par exception qe fut al abatement du bref. A la comune lei il avereit la vewe e statut ne lui tout nent.

Et postea habuit visum.

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 180d, Westmor.

Walter of Stirkeland, by his attorney, demands against Adam Ward one messuage and twenty-four acres of land with the appurtenances at Helsington<sup>1</sup> as his right and inheritance, and into which Adam has no entry unless by William of Stirkeland, sometime husband of Elizabeth of Eyncurt, mother of Walter, whose heir he is, who [William] demised them

#### 39. ANON.<sup>2</sup>

Wast.

Un Robert avoit purchasé la reversion de certeynz tenemenz qe N. de B.<sup>3</sup> tynt a terme de sa vie. N. se attourna. Et pus R. porta son bref de waste vers N., qe demaunda q'il avoit del assignement. R. dit q'il voleit averer l'atournement etc. Et pur ceo q'il n'avoit poynt especialté de assignement, il fut noun sewy.

#### 40. WOLFE v. MARTONE.<sup>4</sup>

Dette.

Dette demaundé par obligacion.

*Hunt.* Il met avant fet en le quel est compris qe s'il ne paye au jour etc. qe le Conestable de Shyptone<sup>5</sup> pusse destreindre etc. Dount vous dioms q'il ad levé : prest etc.

*Denum.* Et nous jugement de l'oure qe nous mettoms avaunt especialté par la quele il est lyé, et il ne mostre nul acquitaunce de nous fet à ly qe ly descharge. Jugement.

<sup>1</sup> Helsington Laithes and Helsington Chapel are both near Kendal.

<sup>2</sup> Text from *R*: compared with *M*, *P*.

<sup>4</sup> Text from *R*: compared with *M*, *P*.

<sup>3</sup> Brede *M*, *P*.

<sup>5</sup> Stapeltone *M*, *P*.



brought the same writ against you, and you had the view. Judgment, whether you should now have the view in a writ of the same nature.

*Scrope.* True it is that aforetime we brought against you a writ on which we had a view, and after the view was demanded the writ was abated because he by whom the demise was made was alive. We pray judgment whether we ought not now to have a view on this writ.

BEREFORD, C.J., to *Denham*. They tell you that the former writ was abated by a plea to the action and not by a plea in abatement of the writ. At common law he would have a view and Statute does not deprive him of it.

Afterwards he had a view.

**Note from the Record** (*continued*).

to him [Adam], and whom [William] the said Elizabeth could not in his lifetime gainsay etc.

And Adam, by his attorney, comes and demands a view thereof etc.

Let him have it. A day is given in the quindene of St. Hilary, and in the meantime etc.

39. ANON.<sup>1</sup>

Assignment of a reversion without specialty.

One Robert had purchased the reversion of certain tenements which N. de B. held for term of his life. N. attorned. Then R. brought his writ of waste against N.; and N. asked what he had to prove the assignment. R. said that he would aver the attornment. And because he had no specialty for the assignment, he was non-suited.

40. WOLFE *v.* MARTONE.

Payment is no answer to a demand of debt by specialty.

Debt demanded by obligation.

*Huntingdon.* He puts forward a deed in which it is said that if payment be not made on such a day, the Constable of Skipton may distrain etc. We tell you that he has levied [the debt]: ready etc.

*Denom.* And we pray judgment since we have produced a specialty, whereby he is bound; and he shows no acquittance made by us discharging him. Judgment.

<sup>1</sup> This case is Fitz. *Monstrauns de faitz*, 39.

*Hervi* rehera le play etc. Et pur ceo qe le Conustable n'avoit qe<sup>1</sup> pouer de lever la dette; par quey s'il ad levé il ad son recoverer vers li; et il met avaunt son fet qe ly lye, et il rien ne mostre qe ly delie; si agarde la court q'il recovere sa dette et ces damages etc.

{*Stantone*<sup>2</sup> recitavit placitum. Et pur ceo qe le Conestable ne avoit nul especialté de la dette lever;<sup>3</sup> par quei s'il ad levé, il ad son recoverir vers lui, et il mette avaunt son fet par quei etc. Ideo consideratum quod etc.}

**Note<sup>4</sup> from the Record.**

A copy of the record occurs in our MS. Y (f. 243).

Henry of Martone, John [Gylot], John of Lofthus, and Adam son of William of Broghtone were summoned to answer Henry [UIF] of [Skipton] and William of [Briggeham], executors of the testament of Peter of Broghtone, of a plea that Henry of Martone render to them twenty marks, and of a plea that John Gilot render to them twenty marks, and of a plea that John of Lofthus render to them twenty marks, and of a plea that Adam render to them twenty marks, which they unlawfully detain. And thereupon the said executors, by their attorney, say that, whereas Henry and the others and each of them *in solidum* on [Nov. 25, 1291] the feast of St. Katherine the Virgin in 20 Edw. [I.] at Sciptone by their writing bound themselves to be holden to Peter, whose executors they are, in five marks to be paid every year for the whole of Peter's life at two terms of the year, to wit a moiety at Martinmas and the other moiety at Pentecost, Henry and the others in Peter's life for four years did not care (*non curaverunt*) to render to him the five marks, and refuse to render them to the executors: damages etc. [ten pounds]. And thereof they produce suit. And they proffer a certain writing under the name of Henry and the others, which witnesses the said debt.

And Henry of Martone and the others, by their attorney, defend [tort and] force etc. when etc. And they confess the writing to be theirs; but they say that the writing ought not to hurt them in this behalf; for they say that in Peter's lifetime they satisfied him of the whole debt; for they say that in the writing it is contained that if Henry of Martone and the others should make default in the payment of the five marks at any term, the lord of Skiptone Castle might distrain them by all their goods and chattels until etc., and they say that the bailiffs of the Castle by virtue of the writing distrained etc. Henry and the others, and fully satisfied Peter of the said [debt] in his lifetime; and this they are ready to aver by the country.

And the executors say that an averment by the country ought not now to prorogue them from the debt in this case, since Henry and the others confess their writing and [show] no acquittance [or specialty to exonerate them from that debt]; and they pray judgment. (*Note continued on opposite page.*)

<sup>1</sup> *Corr.* pas (?).

<sup>2</sup> From *M*, *P*.

<sup>3</sup> lev' *P*.

<sup>4</sup> Since this note was printed the original record has been found on the rolls of Michaelmas Term, 3 Ed. II. (*De Banco Rolls*, No. 179, r. 418*d*). The words in brackets are supplied from the original record.\*

STANTON, J., rehearsed the plea etc.: And since the Constable had [no]<sup>1</sup> power to levy the debt, and if he has levied it, [you] have [your] recovery against him; and a deed is produced whereby [you] are bound and [you] show nothing that unbinds you; therefore the Court awards that he recover his debt and damages etc.

{ STANTON, J., rehearsed the plea: And because the Constable had no specialty for levying the debt,<sup>2</sup> so that if he has levied it, you have your recovery against him; and [the plaintiff] produces a deed, whereby etc.; therefore it is awarded etc. }

**Note from the Record** (*continued*).

And the others do the like.

Therefore a day is given them to hear their judgment here in a month from Easter. At that day the executors came, by Robert Stanford their attorney, [and] offered themselves on the fourth day against John and the others of the said plea that they should be here at this day to hear their judgment of the said suit. And they came not. And they have a day here at this day as appears above. Therefore the sheriff is commanded to distrain them etc. and of the issues etc. and to have their bodies here in three weeks from Michaelmas to hear their judgment etc.

And afterwards at this day came the executors and likewise Henry and the others by their attorneys, which Henry had a day by his essoiner here at this day. And the executors pray judgment as before. And for that Henry confesses the writing etc. and shows no specialty (*factum speciale*) for the acquittance etc., but only the said averment by the country etc., which is not to be admitted against the said deed, which he has confessed above, it is awarded that the executors recover against Henry the said debt and their damages, which are taxed by the justices [at one hundred shillings]. And be Henry in mercy.

And<sup>3</sup> note that he recovered the whole debt against Henry and still the writing remained entire.

HERVEY.<sup>4</sup>—Do you wish to sue against the others?

The attorney of the executors said Yes.

HERVEY.—Sue the great distress etc.

[A writ of *elegit* to the sheriff of York for the executors against Henry follows.]

Note<sup>5</sup> that in this plea and in all other pleas whatsoever if the defendant after he is at judgment is essoined at the day given to him and at the third day he does not come, then let him be distrained: *per* BEREฟอร์ด. And I asked of John of Sheltone whether he ought to be distrained until he comes to judgment. He said, No, only once.

<sup>1</sup> Our books say 'had only power.'

<sup>2</sup> Or 'had no specialty for the debt levied.' Possibly the reasoning is that there was no specialty giving the plaintiff an action against the Constable for

the money levied.

<sup>3</sup> A note by the reporter.

<sup>4</sup> These three sentences in French.

<sup>5</sup> A Latin note.

## 41. [LAURENCE v. GERMEYN.]

Entré, ou un demaunda cum frere et heir et fut alegé qe soun frere avoit un fiz ; et l'autre dit q'il nasquit hors d'esposailles ; et ne fut pas receu. Vide alibi.

I.<sup>1</sup>

Jon<sup>2</sup> de Donestaple<sup>3</sup> demaunda certeynz tenemenz de la seisine un Robert, descend[aunt] a William com a fiz ; de W. a J. qe ore demaunde com a frere.

*Ing.* La ou il fet sa descente de W. a ly com a frere pur ceo etc., nous vous dioms qe cely William avoit un fitz Robert par noun, qe hui ceo jour est en pleyne vye. Jugement si, vivaunt ly, rien pussez demaunder.

*Hedone.* Qe William morust saunz heir de son corps : prest etc.

*Ing.* Est il fitz ou noun ?

*Hedone.* Coment q'il seit fitz, il ne put nulli<sup>4</sup> heir estre, pur ceo q'il naquit avant les esposailles : prest etc.

*Ing.* Vostre dit n'est autre mès en<sup>5</sup> evidence pur estraunger Robert.<sup>6</sup> Par qey nous demaundoms jugement, depus qe vous ne dites poynt qe mesme cely Robert est bastarde, si a tiel replicatioun devet avenir.

*Hervi.*<sup>7</sup> Si vous biet fere Robert tiel qe il ne put estre le heir W., il vous covient estraunger ly de son sanke. Mès ceo ne poet fere saunz ceo qe<sup>8</sup> vous ne dites q'il est bastarde. Par qey si vous volet estre r[espondu] a cesti bref, fetes ly tiel qe son estre<sup>9</sup> ne vous deit nuire, come a dire pleynement bastarde.<sup>10</sup>

*Hedone.* Bastarde : prest.

Et alii eontra.

Ideo preceptum est vicecomiti quod venire faciat etc.

II.<sup>11</sup>

Un A. porta sun bref d'entré *cui* etc., et conta de la seisine sa aele descendant a Johan com a fiz ; de Johan a W. com frere et heir.

*Hengh.* Nous dioms qe a W. ne puët rien descendre, par la r[eson] qe J. ad un fiz en pleine vie R. par noun. Jugement etc.

<sup>1</sup> Text from *R*: compared with *M*, *P*. Headnote from *P*. <sup>2</sup> Adam *P*.  
<sup>3</sup> *Ins.* porta son bref de entre et *P*. <sup>4</sup> nul *M*. <sup>5</sup> autre qe *M*; nest qe une *P*.  
<sup>6</sup> *Om.* pur . . . Robert *M*. <sup>7</sup> Stant. *M*, *P*. <sup>8</sup> fere si *M*. <sup>9</sup> festes lui title de son estat *M*; fetes ly tiel qe soun estat *P*. <sup>10</sup> End of case *P*. <sup>11</sup> Text from *Y* (f. 94).



41. [LAURENCE *v.* GERMEYN.<sup>1</sup>]

When the existence of a nearer heir is pleaded, the reply should be 'bastard,' and not merely 'born before wedlock.'

## I.

John of Dunstable demanded certain tenements on the seisin of one Robert, with descent to William as son, and from him to the demandant as brother.

*Ingham.* Whereas he makes his descent from W[illiam] to himself as brother, for that [he died without an heir of his body], we tell you that William had a son, Robert by name, who is alive this day. Judgment, whether while he lives you can demand anything.

*Hedon.* William died without an heir of his body: ready etc.

*Ingham.* Son or not?

*Hedon.* Even if he be his son, he can be no man's heir, for he was born before espousals: ready etc.

*Ingham.* What you say is but by way of evidence to estrange Robert; therefore we demand judgment whether you can get to such a replication since you do not say that Robert is bastard.

STANTON, J. If you hope to make Robert such that he cannot be heir of W., you must estrange him from his blood. But you cannot do that without saying that he is bastard. So if you wish to be answered to this writ, make him such that his existence<sup>2</sup> cannot hurt you, as by saying right out that he is bastard.

*Hedon.* Bastard: ready.

Issue joined.

*Venire facias* to the sheriff etc.

## II.

One A. brought his writ of entry *cui* [*in vita*], and counted on the seisin of his grandmother, with descent to John as son, and from John to W. as [brother] and heir.

*Ingham.* We say that nothing can descend to W., for John [had] a son, R. by name, who is living. Judgment etc.

<sup>1</sup> The proper names are taken from the record, of which a note is printed in the Appendix. The identity of the case reported with the record is doubtful, as the facts are not in agreement.\*

<sup>2</sup> Or possibly 'his estate.'

*Hedon.* Sun estre nous ne deit grever, qar il nasquit devant les esposailles. Jugement etc.

*Hengham.* Ceo n'est pas r[espons] sanz ceo qe vous diez q'il fust bastard et issi bastard qu'il nasquit etc.

*Hervi a Hedon.* Fetes vostre r[espons] plus pleine.

*Hedon.* Bastarde : prest del averer.

Nota qe <sup>1</sup> nasquit hors des esposailles n'est pas excepcion, mès evidence al excepcion de bastardie etc.

## 42. BUKENHAM v. PAYN.

Forme de doun en le descendre.

I.<sup>2</sup>

*Ingham* qe <sup>3</sup> un Thomas qe de ceux tenemenz en fut seisi etc. a Angnes <sup>4</sup> et as heirs de son corps issanz ; par quel doun A. fut seisi etc. par la forme etc. De Agnes descendy <sup>5</sup> a Alice et a Dyonise com a files etc. De Alice de sa purpartie <sup>6</sup> a W. etc. Et fuit breve tale : 'et que post mortem prefate Agnetis et Alicie filie eiusdem Agnetis D[ionisie] filie et uni heredum prefate Agnetis et W. filio prediete Alicie consanguineo et alteri heredum eiusdem Agnetis descendere debent per formam etc.'

*Cant.* Jugement du bref, qe <sup>7</sup> ne suppose pas le droit avoir descendu <sup>8</sup> a D[yonise] tantqe après la mort Alice, a qy ele fut coheir.

*Ing.* Ceo ne prove poynt le bref, eynz suppose <sup>9</sup> qe D[yonise] ne pusse cest action user sanz W., ne W. ne la put user s'il ne face Alice morte.

*Berr.* N'est ele pas morte ?

*Ing.* Si est. Mès ele survesqi Agnes, <sup>10</sup> par qey ele est nommé etc.

E si *Cant.* ust chalengé le bref en taunt qe il dit qe Alice survesqy Agnes, et ne la fit poynt file et un des heirs Agnes en le bref, mès file *tantum*, depus q'ele survesqy Agnes et fut un des heirs Agnes, de qy le bref ne fit point de mencion, le bref se ust abati al dit des uns <sup>11</sup> mès *Cant.* ne chalangea <sup>12</sup> poynt etc.

*Berr.* a *Cant.* Si vous volet abatre par la resoun qe vous avet

<sup>1</sup> qi Y.      <sup>2</sup> Text from *R* : compared with *M*, *P*.      <sup>3</sup> Un Ingham Beng' porta son bref de forme de doun et counta qe *P*.      <sup>4</sup> *Ins.* de G. *M*.      <sup>5</sup> *Ins.* le droit *M*.  
<sup>6</sup> De Agn. desc. a Alice cum a fille et heir. De Alice a Dyonise cum a fille etc. De Dyonise *P*.      <sup>7</sup> qil *P*.      <sup>8</sup> *Om.* descendu *R*; *ins.* *M*, *P*.      <sup>9</sup> einz covendr' les paroles de bref estre tiels *M*; *sim.* *P*.      <sup>10</sup> *Om.* until after next Agnes *M*, *P*.  
<sup>11</sup> abatu secundum quosdam *M*. *Statement shortened and unintelligible P*.  
<sup>12</sup> ne le chacea *M*.

*Hedon.* His existence ought not to hurt us, for he was born before espousals. Judgment etc.

*Ingham.* That is no answer, unless you say that he was bastard, and bastard because born [before espousals].

STANTON, J., to *Hedon.* Make your answer fuller.

*Hedon.* Bastard : ready to aver it.

Note that birth outside espousals is not an 'exception,' but is evidence for the 'exception' of bastardy.

#### 42. BUKENHAM v. PAYN.

Formedon for heirs of different generations.

##### I.

*Ingham.* One Thomas, who was seised of these tenements, [gave them] to Agnes and the heirs of her body issuing. By that gift she was seised etc. by the form of [the gift]. From her [the right] descended to Alice and Denise as daughters etc. From Alice [the right] of her share [descended] to W. etc. (And the writ ran : 'and which after the death of Agnes and of Alice, daughter of Agnes, ought to descend by the form of the gift to Denise, daughter and one of the heirs of Agnes, and to W. son of Alice, cousin and the other of the heirs of Agnes.')

*Cambridge.* Judgment of the writ, for it supposes that there was no descent of the right to Denise until after the death of Alice, whose coheir she was.

*Ingham.* The writ does not say that. It merely supposes that Denise could not use this action without W., and W. cannot use it unless he makes Alice dead.

BEREFORD, C.J. Is not she dead ?

*Ingham.* Yes. But she outlived Agnes ; and so she is named.

According to the opinion of some, the writ would have been abated if *Cambridge* had challenged it on the ground that it made Alice outlive Agnes, and did not call her 'daughter and one of the heirs of Agnes,' but merely 'daughter'—whereas she survived Agnes and was one of her heirs. But *Cambridge* did not take that point.

BEREFORD, C.J., to *Cambridge.* If you wish to abate [the writ]

dit, donez meillour bref; qe il nous semble ceo bref asset bon et de bone forme, qe<sup>1</sup> covent a force qe le bref die qe le auncestre le demaundaunt, par qy il dit les tenemenz a ly descendre, seit mort, eynz q'il purra ceste actioun user.

*Cant.* Le bref est faus qe<sup>2</sup> dit après<sup>3</sup> la mort Alice etc. a D[yonise] doivent descendre.<sup>4</sup>

*Ing.* Vous le<sup>5</sup> poyntez malement, eyntz est bone qe<sup>6</sup> dit après<sup>7</sup> la mort Agnes et Alice et<sup>8</sup> Dionise etc. et<sup>9</sup> a W. descendre doivent.

Pus *Berr.* et *Hervi* agarderent le bref bon.

*Cant.* T. ne dona pas: prest etc.

Et alii econtra. Ideo ad xij.<sup>10</sup>

## II.<sup>11</sup>

Un William et Dyonise sa aunte porterent bref de fourme de doun en le descendre, et counterent de la seisine une Agnes, et fesoient la descente a Alice et a Dionise come as filles et un heir etc., de Alice etc. de sa purpartie a William q'ore demande ensemblement ove Dionise. Et volleit le bref: 'et que post mortem ipsius Agnetis et Alicie unius heredum<sup>12</sup> prediete Agnetis prefate Dionisie filie<sup>13</sup> et uni heredum Agnetis et W[illelmo] filio prediete Alicie consanguineo et alteri heredum eiusdem Agnetis descendere debent per formam donacionis prediete.'

*Cant.* Jugement du bref, qar le bref veot: 'et que post mortem Agnetis et Alicie Dyonisie filie et uni heredum prediete Agnetis.' La suppose il qe le droit descendra a Alice et a Dyonise la ou le droit est descendu immediate de Agnes a Dyonise come a fille. Jugement.

*Hengh.* Donetz mellour bref.

*Caunt.* nescivit.

Et ideo stetit. Et puis dit qe les tenemenz ne furent pas donetz a Agnes etc.: prest etc.

Et alii econtra.

### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 188, Norf.

John of Bukenham and Denise his wife, by their attorney, and William son of Alice, by his guardian, demand against Amice Payn of Wygenhale two acres of land and a half with the appurtenances in Wigenhale,<sup>14</sup> and against Gilbert Gervail one acre of land and a half with the appurtenances

<sup>1</sup> et M. <sup>2</sup> qil M. <sup>3</sup> qapres M. <sup>4</sup> Add Ber. agarda le bref bon and end report P. <sup>5</sup> les M. <sup>6</sup> qil M. <sup>7</sup> qe apres M. <sup>8</sup> Corr. a. <sup>9</sup> Om. et M.

<sup>10</sup> Postea Ber. et Cant. sens. bon excepto (?) Scrop. in banco T. ne dona pas prest etc. ideo etc. M. <sup>11</sup> Text from B. <sup>12</sup> uni her' B. <sup>13</sup> fill' B.

<sup>14</sup> Mod. Wiggenhall, near King's Lynn.



for the reason you have given, you must give a better writ; but it seems to us that this writ is good enough in form; for it must needs say that the demandant's ancestor, from whom the tenements (so he says) should descend to him, was dead before he can use the action.

*Cambridge.* The writ is false, for it says, 'after the death of Alice etc. ought to descend to D[enise].'<sup>1</sup>

*Ingham.* You punctuate it wrongly. It says 'after the death of Agnes and Alice ought to descend [to] Denise and W.'<sup>2</sup> So it is good.

Afterwards BEREฟอร์ด, C.J., and STANTON, J., upheld the writ.

*Cambridge.* T. did not give; ready etc.

Issue joined. So to the twelve etc.<sup>3</sup>

## II.<sup>4</sup>

One William and Denise his aunt brought a writ of formedon in the descender and counted of the seisin of one Agnes; and they made the descent to Alice and Denise as daughters and one heir etc.; and from Alice etc. of her share to William the now demandant along with Denise. And the writ ran: 'and which after the death of Agnes and Alice, one of the heirs of Agnes,<sup>5</sup> ought to descend by the form of the said gift to Denise, daughter and one of the heirs of Agnes, and to W[illiam], son of Alice, cousin and the other of the heirs of Agnes.'

*Cambridge.* Judgment of the writ, for it says, 'and which after the death of Agnes and Alice [ought to descend] to Denise, daughter and one of the heirs of Agnes.' Thus he supposes that the right is to descend [from] Alice to Denise, whereas the right descended immediately from Agnes to Denise as daughter.

*Ingham.* Then give a better writ.

*Cambridge* could not.

So [the writ] stood. And then [*Cambridge*] said that the tenements were not given to Agnes etc.: ready etc.

Issue joined.

### Note from the Record (*continued*).

in the same vill, which Andrew son of Gocelin Harneys gave to Agnes, daughter of Lecia, and the heirs of the body of Agnes issuing, and which after the death of Agnes and of Alice daughter of Agnes, ought to descend to the said Denise, daughter and one of the heirs of Agnes, and to the said

<sup>1</sup> One of our books ends the case here with the statement that Bereford held the writ good.

<sup>2</sup> Apparently the emphasis should be laid on the two last words.

<sup>3</sup> One of our books ends with an obscure sentence.

<sup>4</sup> This version appears in the Old Edition, p. 89.

<sup>5</sup> This is not quite accurate.

Note from the Record (*continued*).

William, son of Alice, cousin and the other of the heirs of Agnes by the form of the said gift. And thereupon they say that Andrew was seised of the tenements in his demesne as of fee etc., and gave them to Agnes and the heirs of her body in form aforesaid; and that by that gift Agnes was seised of the tenements etc., in time of peace, in the time of Henry [III.], by taking the esplees etc., by the form of the gift etc.; and from her the right etc. descended to Alice and Denise as daughters and heirs: and from Alice the right of her purparty descended to William as son and heir; and the same after her death etc.; and thereof they produce suit.

(*Note continued on opposite page.*)

43. ANON.<sup>1</sup>

[*Cui in vita. Bref abatu.*]

Un *cui in vita* fut porté vers Alice qe fut la femme W. Howard dez tenemenz en B. etc. par diverses precipes etc. quod reddat etc. tantum etc. in B. q'est hamele etc.; e l'atre precipe etc. 'in eadem villa.'

*Hedone.* B. n'est pas vile. Dount le bref qe dit 'in eadem villa' est mauveys.

*Lauf.* Vostre exceptioun n'est pas pleyne si vous ne dites qe ele n'est ville ne hamele.

*Hunt.* Ceo n'est pas plee d'assise, et vostre bref l'ad nommé vile, q'est faux, qar ele est hamele de S.

Et quia nominabatur villa in brevi cum non fuit, le bref s'abati par *Berr.* etc.

{Nota<sup>2</sup> en un *cui in vita* le bref abatist pur ce qe la demaunde fut en hamelette. Mès il furent divers precipes et disoient 'in eadem villa.' Et credo quod, eadem ratione, ne fut qe un precipe.}

44. ANON.<sup>3</sup>

Dette, ou l'especialité fuist variaunt au bref, et fuist agardé bon.

En un bref de dette le baroun porta le bref sur especialté, par qel le defendaunt fut obligé a ly et a sa femme; qe fut chalangé pur le variaunce. Stetit<sup>4</sup> tamen breve, qe si jugement se freit qe la

<sup>1</sup> Text from *R*: compared with *P*.    <sup>2</sup> This note from *P*.    <sup>3</sup> Text from *R*: compared with *M*, *P*, *B*.    Headnote from *B*.    <sup>4</sup> fecit *M*.

Note from the Record (*continued*).

And Amice and Gilbert, by their attorney, come and defend their [the demandants'] right when etc.; and they say that John and Denise and William can claim nothing in the tenements by the form of the gift; for they say that Agnes, to whom Andrew is supposed (*debut*) to have given the tenements, never had anything in the tenements by Andrew's gift as John and Denise and William say; and of this they put themselves upon the country.

Issue is joined, and a *venire facias* is awarded for the morrow of the Purification.

43. DEWE *v.* HOWARD.<sup>1</sup>

Writ of *cui in vita* abated for not naming a vill.

A *cui in vita* was brought against Alice, who was the wife of W. Howard, of the tenements in B. etc., by various *praecipies* etc., 'quod reddat etc. tantum etc. in B.,' which is a hamlet etc.; and the second *praeci*pe said 'in the same vill.'

*Hedon.* B. is not a vill. Therefore the writ which says 'in eadem villa' is bad.

*Laufer.* Your exception is not complete if you do not say that it is neither vill nor hamlet.

*Huntingdon.* This is not a plea of assize, and your writ has called it vill, which is wrong, for it is a hamlet of S.

And because it was called vill in the writ when it was not, the writ was abated by BEREฟอร์ด, C.J.

{Note <sup>2</sup> in a *cui in vita* the writ was abated because the demand was in a hamlet. But there were various *praecipies*, and [those after the first] said 'in the same vill.' And I think that the result would have been the same had there been but one *praeci*pe.}

44. ANON.<sup>3</sup>

Debt. Husband alone sues on specialty made to him and wife.

In a writ of debt the husband brought the writ on a specialty by which the defendant was bound to him and his wife. This was challenged for the variance. The writ, however, stood, for if judgment were made that the wife should recover with her husband, it

<sup>1</sup> Proper names from the record, of which a note is printed in the Appendix.

<sup>2</sup> Not in all our books.

<sup>3</sup> This case is in the Old Edition, p. 93.

femme recovereyt ove soun baroun, ensuereit q'ele ust propreté de chatel vivaunt son baroun etc.<sup>1</sup> {Et<sup>2</sup> tamen stetit breve pur ceo qe si jugement se freit qe la femme rec[overoit] ove soun baroun et ensi rec[overoit] propreté de chatel et averoit vyvaunt soun baroun qe serroit encountre lei de terre. Par quei le bref fuist agardé bon.}

45. ANON.<sup>3</sup>

[Fine: la femme examinée.]

En un fin a levir du dreit la femme en examenement la femme dit<sup>4</sup> qe ceo ne fut mye sa volonté etc.

*Berr.* fit venir le baroun a la bare et ly dit qe la fyn ne devoit lever countre le gré etc., et<sup>5</sup> ly def[endit] sur qaunt q'il purra forfere q'il ne fait mal ne moleste<sup>6</sup> a sa femme par encheson<sup>7</sup> etc.

46. SAUNDREVILLE v. SALE.<sup>8</sup>

Bref de cosinage.

Thomas de Sanderville<sup>9</sup> porta bref vers Waltier de la Sale et counta de la seisine son cosigne<sup>10</sup> J., de qi pur ceo etc. a Maus' com a frere<sup>11</sup> et heir; de M. a Richard come a fitz etc.; de R. a Thomas com a fitz etc.

*Denom.* La ou vous fetes vostre descende de J. pur ceo etc. a Mauns', nous vous dioms qe mesme celui J. de qi etc. se fit esposer a un Richard de Coupelande, de qi ele avoit issue Aleyn; de A. issi Richard; de Richard, Aleyn q'ore est en pleine vie et en le counté de Lancastre ou son ael nasquit et illoeqes morust. Jugement si vivaunt Aleyn, pussez accioun avoir.

*Malm.* Johan de qi seisine nous demaundoms morust seisi<sup>12</sup> en le counté de Berwyke par<sup>13</sup> pays de cele counté ou ele morust.

*Herle.* Nostre dit vous barre d'accioun si verificatur.<sup>14</sup> Dont il convendra d'averrer<sup>15</sup> la ou ele purra a mieuthe<sup>16</sup> estre trié, et c'est par pays ou Aleyn nasquit et fut nurry et son issue demurt et nasquit.

<sup>1</sup> breve quia proprietas viri est *M.*    <sup>2</sup> This version from *B*, where the plaintiff is William and the defendant Roland.    <sup>3</sup> Text from *R*: compared with *M*, *P*.  
<sup>4</sup> dreit la femme dit en examenement *R*.    <sup>5</sup> *Om.* et *R*; *ins.* *M*, *P*.    <sup>6</sup> *Om.* ne moleste *M*, *P*.    <sup>7</sup> par cele resoun *M*; par resoun de cel la *P*.    <sup>8</sup> Text from *M*: compared with *P*.    <sup>9</sup> Schrarderville *P*.    <sup>10</sup> sa cosine *P*.    <sup>11</sup> seor *P*.    <sup>12</sup> saunz heir *P*.    <sup>13</sup> counte de Bed. et prioms *P*.    <sup>14</sup> *Om.* si verificatur *P*.    <sup>15</sup> *Ins.* par *P*.  
<sup>16</sup> *Om.* a mieuthe *P*.



would follow that she would have property in a chattel during her husband's life etc. {The<sup>1</sup> writ, however, stood because if judgment were made that the wife should recover with her husband and thus should recover property in a chattel, and should have it during her husband's life, it would be contrary to the law of the land. Wherefore the writ was held good.}

## 45. ANON.

Fine. A married woman refuses consent on examination.

On a fine being levied of a wife's right, she said on examination that it was not her will etc.

BEREFORD, C.J., made the husband come to the bar and told him that the fine ought not to be levied against the will [of his wife], and forbade upon penalty of all he could forfeit to do harm or molestation to his wife by reason etc. [of her refusal].

46. SAUNDREVILLE *v.* SALE.

Cosinage. Existence of a direct heir asserted and denied. Venue.

Thomas of Saundreville brought a writ against Walter de la Sale, and counted of the seisin of his cousin [Joan], from whom because [she died without issue, the fee descended] to Maunser as brother and heir, and from him to Richard<sup>2</sup> as son etc., and from him to Thomas as son etc.

*Denom.* Whereas you make your descent from [Joan] because etc. to Maunser, we tell you that the same [Joan], of [whose seisin you demand], was married to one Richard of Copeland, of whom she had issue Alan; of Alan was born Richard; of Richard, Alan, who is now alive in the county of Lancaster, where his grandfather was born and died. Judgment, whether in Alan's lifetime you can have action.

*Malberthorpe.* [Joan], of whose seisin we demand, died seised in the county of [Berks]: ready etc. by the country where she died.

*Herle.* Our statement bars you from action, if it is averred. Therefore it must be averred where it can best be tried, and that is in the country where Alan was born and bred, and his issue dwelt and were born.

<sup>1</sup> An alternative statement.

<sup>2</sup> *Corr.* Nigel.

*Malm.* Plus tost deit affirm[ative] estre averré qe neg[ative] et sur l'affirm[ative] pay court: ele n'avoit nul heir de son corps com ele morust sanz heir de son corps. Dont lour dit q'est q'il avoit heir est affirm[ative] qe deit a vostre dit estre averré. D'autrepart lour r[espouns] est barre a vostre accioun. Donqe covent qe vous le grauntez ou dediez et q'eux l'averrent, et si sic, l'averrement de pays qe ad lour dit conue.

*Toud.* Nostre bref est en lieu de mortdauncestre, qe nostre pere le poet user s'il fut en vie de la mort J. sa aunte; en quel bref nous averoms la seisine l'auncestre de qi mort etc.

{*Malm.*<sup>1</sup> Nous sumes demaundauntz, et a nous est d'averer nostre bref et nostre counte. Et nous avoms counté de la seisine J. nostre cosine, qe morust saunz heir en tiel counté. Et c'est une affirmative, qe pluis tost serra averé qe une negative; ou vous avez replié encountre nous q'ele ad issue en pleyne vye, q'est a la negative de nostre counte. Par quei nous averoms l'averement qe ele morust saunz heir etc.

*Herle.* Nostre r[espouns] amounte a taunt qe vous n'estes pas pluis prochain heir, et ceo par certeygne cause, qe nous avoms dit, la quele cause covent estre averé. Et prioms pais de countee etc.

*Toud.* Si M. fut en vie, et ele portast le mortdauncestre, et replié fut encountre qe J. avoit issue, ele serroit receu d'averer q'ele fut plus prochain heir. Sic hic.}

*Herle.* Le nestre Aleyn vous est obstakel, quel l'estat serra trié par pays ou il nasquit et demurt etc.

*Ber.* Homme ad veu q'en Kente<sup>2</sup> l'assise ad dit en un mortdauncestre q'eux ne savoient si le demaundaunt fut fitz etc. q'il nasquit pas entre eux ne illoeqes fut nurry.<sup>3</sup> Dount la court ly demaunda ou il nasquit, et il dit etc., et inde fec[it] inquisitionem, de quel verdit se fit le jugement.

Et sic adiornatur.

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 226d, Berk.

Thomas de Saundreville, by his attorney, demands against Walter de la Sale of Eabberbury the manor of Dunynton by (*iuxta*) Shawe<sup>4</sup> with the appurtenances, whereof Joan, wife that was of Richard of Coupeland, cousin of Thomas, whose heir he is, was seised in her demesne as of fee on the day of her death etc. And thereupon he says that Joan, cousin etc., was seised of

<sup>1</sup> Substitute for last two speeches *P.*    <sup>2</sup> *Om.* qen Kente *P.*    <sup>3</sup> nuri qar il nasquit et nuri en tiel counte. Et de illoques pays prys *P.*    <sup>4</sup> Donnington and Shaw are near Newbury.

*Malberthorpe.* An affirmative ought to be averred rather than a negative, and on the affirmative the country should pass. She had no heir of her body, as she died without heir of her body. Therefore their<sup>1</sup> statement that she had an heir is affirmative, and ought to be averred according to what you say. Moreover, their answer is a bar to your action. Therefore you must grant or deny it, and they must aver it; and, if that be so, the averment should be by the country which had cognizance of what they say.

*Toudeby.* Our writ is in lieu of a mortdancestor which our father could use on the death of his aunt [Joan], if he were alive; and in that writ we should aver the seisin of the ancestor on whose death [the assize is brought].

{*Matberthorpe.*<sup>2</sup> We are the demandants, and it is for us to aver our writ and our count. And we have counted on the seisin of [Joan] our cousin, who died without [issue] in such a county. That is an affirmative, which ought to be averred rather than a negative; whereas you have said in reply to us that she has issue living; and that is a negative of our count. So we shall have the averment that she died without heir etc.

*Herle.* Our answer amounts to this, that you are not next heir, and we assign a cause, which we have stated, and that cause should be averred. We pray a jury of [Lancashire].

*Toudeby.* If [our father] were alive and brought the mortdancestor, and it was replied against him that [Joan] had issue, [our father] would be received to aver that [he] was next heir. So here.}

*Herle.* Alan's birth is an obstacle to you, and his existence<sup>3</sup> should be tried by the country where he was born and dwells.

BEREFORD, C.J. One has seen that in Kent the assize has said in a mortdancestor that they did not know if the demandant was the son etc., for he was not born among them, nor brought up there. So the Court asked him where he was born, and he said etc., and [the Court] took an inquest thence, and on the verdict judgment was made.

And so [the case] is adjourned.

#### Note from the Record (*continued*).

the manor with the appurtenances in her demesne as of fee etc., in time of peace, in the time of Henry [III.], by taking thence esplees to the value etc. and thereof died seised; and from her, since she died without an heir of her body, the fee etc. descended to one Maunser as brother and heir; and from him

<sup>1</sup> The text becomes obscure, See the alternative below. Perhaps there should be a change of speaker.

<sup>2</sup> An alternative for the last two speeches.

<sup>3</sup> Reading *estre* instead of *estat*.

Note from the Record (*continued*).

the fee etc. descended to one Nigel as son and heir; and from him the fee descended to this Thomas, the now demandant, as son and heir: and thereof he produces suit etc.

And Walter, by his attorney, comes and defends his right when etc.; and he says that he ought not to answer him thereof; for he says that Joan, of whose seisin etc., was espoused to the said Richard, sometime her husband, at Bolton in Furneys in the county of Lancaster; and in the said county of Lancaster they dwelt all their life; and there they had issue, to wit, Alan, son etc., who likewise dwelt in the same county, and had issue one Richard, son etc.; and from him issued one Alan as son and heir; and he is still alive and dwelling at Bolton in Fourneys in the said county of Lancaster; and therefore, as Thomas asserts that Joan, cousin etc., died without an heir of her body, and she had issue and an heir in form aforesaid,

47. KEMBEARE *v.* KEMBEARE.

[Prise des avers. Avowerie par celui a qi la reversion fut graunté sur un tenaunt par terme de sa vie.]

I.<sup>1</sup>

*Scrop.* avowa etc. par la reson q'il tynt de ly a terme de sa vye par les services etc.; des quex services un Thomas de qy le pleyntif tynt a terme de vye etc. fut seisi, et graunta la revercioun etc., a cely qe avowe, par quel graunt le pleyntif se attourna a ly de sa fealté; et pur sa rente ariere avowe il la prise etc. Et mist avaunt fet du graunt etc.

*Ing.* Vostre avowerie est defectife, qe vous dites qe nous tenoms de vous a terme de nostre vie, et ne dites pas de quele r[esoun]<sup>2</sup> ne<sup>3</sup> de qy assignement etc. Jugement.

*Scrop.* Jeo dy qe cely a qy le droit fut graunta a nous, et ceo suffit, qe jeo ne suy pas a recoverer le demene.

Et fust osté etc.

*Ing.* Nous avoms rien si noun joynt ove Richarde nostre fitz, sanz qy etc. et prioms eyde etc.

Mès ceo fut amendé per *Lauf.* sic: 'de qy vous ne fetes pas mencion en l'avowerie; jugement.'

*Hervi.* Qey avez vous de ceo?

*Ing.* Prest etc.

<sup>1</sup> Text from *R*: compared with *M*, *P*.

<sup>2</sup> de qi heritage *P*.

<sup>3</sup> *Om.* ne *R*; *ins.* *M*.



**Note from the Record** (*continued*).

as he is ready to aver by the country of the county of Lancaster of the neighbourhood of Boulton in Fournays, [he prays judgment] etc.

And Thomas says that Joan was espoused to Richard, sometime her husband, at Dunyngton in the county of Berks, and there died without an heir of her body etc. And this he offers to aver by the country of the county of Berks of the neighbourhood of Dunynton.

And because it is for the court to see from what county a jury ought to be made in this case according to the allegations etc., a day is given here to the parties to hear their judgment etc. on the octave of the Purification etc.

Afterwards, the process having been continued on both sides (*hinc inde*) by essoin etc. to the octave of St. John Baptist A.R. 4, the parties come by their attorneys, and a day is given them here to hear their judgment on the quindene of Martinmas in the same state as now.

47. KEMBEARE *v.* KEMBEARE.

Avowry upon tenant for life by grantee of reversion, producing deed of grant. An averment of joint tenancy not allowed.

**I.**

*Scrope* avowed etc. by reason that [the plaintiff] holds of him for term of life by the services etc.; of which services one Thomas, of whom the plaintiff held for term of life etc., was seised; and he granted the reversion etc. to the avowant; on this grant the plaintiff attorned to him for his fealty; and for his rent arrear he avows the taking etc. And he produced a deed of the grant etc.

*Ingham*. Your avowry is faulty, for you say that we hold of you for the term of our life, and do not say of [whose heritage] nor on whose assignment etc. Judgment.

*Scrope*. I say that he who had the right granted to us, and that is sufficient, for I am not about to recover the demesne.

And he [Ingham] was ousted etc.

*Ingham*. We have nothing except jointly with Richard our son, without whom etc. And we pray aid.

But this was amended by *Laufer* thus: 'Of whom you do not make mention in the avowry. Judgment.'<sup>1</sup>

STANTON, J. What have you for that?

*Ingham*. Ready etc.

<sup>1</sup> Thus substituting a plea in abatement for the aid prayer.

*Hervi.* Lour avoverie est en le droit prové par<sup>1</sup> especialté. Et vous ne le poet pas defere par vostre simple dit. Et si dient<sup>2</sup> eux q'il furent seisi par my vostre mayn demeine de feuté. Item.<sup>3</sup>

*Ingham.* Jeo vey en temps Sire J. de Metingham qe iij.<sup>4</sup> furent joynt feffés, des quex ne fut enherité mès qe l'un; et tyndrent par homage. Le seignour resceut le homage l'un qe n'avoit forge a terme de vye, et pus le voleit weiver et destreindre. Et avowa par le homage cely qe fut enherité. Et pur ceo q'il fut seisi del homage del tenaunt qe unqore fut en vye<sup>5</sup> pur mesmes les tenemenz<sup>6</sup> il estut a sa cheaunce.

*Ingham.*<sup>7</sup> Jeo plede a la tenaunce de ceo q'il dit qe jeo tynke de ly,<sup>8</sup> jeo ne dey pas estre chacé a r[espoundre] al seisine.

*Hervi.* Il prove la tenaunce par fet et veut averer l'atournement.

*Ingham.* Ou attourna il?

*Scrop.* Dixit ubi.

*Ingham.* Il ne se attourne<sup>9</sup> pas: prest etc.

Et alii econtra.

## II.<sup>10</sup>

Un A. se plaint qe B. atort prist ces avers scilicet un chival etc.

B. avowe la prise bene e droiteurele, par la r[eson] qe il tient un mees e une bovee de terre ove les appartenances en N. de W. de C. a terme de sa vie, rendant de ceo xx. souz par an e une suite etc.; le quel W. ces services ensemblement ove la reversion des tenemenz granta a dit B. par ceste chartre. (E mist avant la chartre qe ceo tesmoigne.) E pur la rente arere de un an jour de la prise en H. com en parcel des tenemenz etc.

*Hengham.* Ceste avoverie n'est pas pleine sanz ceo qe vous ne eussiez dit q'il fut atturné. E demandoms jugement etc. ceste avoverie.

*Hervy a Denh.* Fetes<sup>11</sup> vostre avoverie plus pleine.

*J. Denham.* Vous atturnastes a nous de vostre fealté e de vos autres services en la precence A. B. e C. tieu jour etc. e nous seisi prest etc.

*Hengh.* A ceste avoverie ne poems nous estre partie sanz J. nostre fiz, qe auxi haut est en la tenance com nous a charger ou descharger ces tenemenz; sanz lui ne poems estre resceu.

<sup>1</sup> droit etc. par M.    <sup>2</sup> dit qar il dient M.    <sup>3</sup> feute. Ingham. Et B; feute. Item M, P.    <sup>4</sup> Ins. soers M; seors P.    <sup>5</sup> Om. et pus voleit . . . vye M; sim. P.    <sup>6</sup> Ins. et M, P.    <sup>7</sup> Estre ceo R; Ingham M, P.    <sup>8</sup> Ins. dont M, P.    <sup>9</sup> Corr. attourna.    <sup>10</sup> Text from Y (f. 171).    <sup>11</sup> fete Y.

STANTON, J. Their avowry is in the 'right,' proved by specialty. And you cannot defeat it by your simple word. And they say that they were seised by your own hand of fealty. Also,<sup>1</sup> I saw in the time of Sir John of Mettingham that three [sisters] were jointly enfeoffed, of whom only one had an estate of inheritance, and they held by homage. The lord received the homage of one who held only for term of life, and then wished to waive it and distrain. And he avowed for the homage of [her] who had the estate of inheritance. And because he was seised by the homage for the same tenements of a tenant who was still alive, he failed.<sup>2</sup>

*Ingham.* I plead to the [alleged] tenancy of what he says I hold of him, and so I ought not to be driven to answer to the seisin.

STANTON, J. He proves the tenancy by deed and wishes to aver the attornment.

*Ingham.* Where did he attorn?

*Scrope* said where.

*Ingham.* He did not attorn: ready etc.

Issue joined.

## II.

One A. complained that B. unlawfully took his beasts, to wit, a horse.

B. avowed the taking good and lawful, for the reason that [A.] held a messuage and a bovaté of land with the appurtenances in N. of W. de C. for the term of his life, rendering therefor twenty shillings a year and one suit etc.; and W. granted the services together with the reversion of the tenements to B. by this charter. (He produces a charter which witnesses this.) And for the rent arrear for a year on the day of the taking [he took the horse] in H. as parcel of the tenements etc.

*Ingham.* This avowry is not full enough, unless you say that [we] were attorned. We pray judgment of this avowry.

STANTON, J., to *Denom.* Make your avowry fuller.

*J. Denom.* You attorned to us for your fealty in the presence of A. B. and C. on such a day etc., and we were seised etc.

*Ingham.* To this avowry we cannot be party without J. our son, who stands as high in the tenancy as we do for the purpose of charging and discharging these tenements; and without him we cannot answer.<sup>3</sup>

<sup>1</sup> Some books attribute this to Ingham.

<sup>2</sup> Translation conjectural.

<sup>3</sup> The text says 'cannot be received.'

*Denham.* A ceo ne avendrez mie, qar vous mesmes com soule tenant atturnastes. Demandoms jugement si eide devez avoir.

*Hengham.* Il ne se atturna unkes : prest etc.

Et alii contrarium.

**Note from the Record.**

De Banco Rolls, Mich, 4 Edw. II. (No. 183), r. 268d, Devon.

Elias of Kembeare was summoned to answer William of Kembeare of a plea wherefore he, together with Roger Gymound and Richard Radeclyve, took William's beasts and unlawfully detained them against gage and pledges etc. And thereupon William, by David of Cervington his attorney, says that on [Oct. 19, 1309] Sunday next after St. Luke the Evangelist in A.R. 3, in the vill of West Kempebare<sup>1</sup> in a place called Brademore, Elias, together etc., took a mare and a foal of William's and impounded and unlawfully detained them against gage etc.: damages, a hundred shillings. And thereof he produces suit.

And Elias, by Simon of Bere his attorney, comes and defends tort and force when etc.; and he avows the taking: and lawfully, for he says that William sometime held of Adam of Radeweye a messuage and a carucate of land with the appurtenances in the vill of Westkempebere for the term of William's life, rendering thence annually to Adam ten shillings at two terms etc., to wit, five shillings at Michaelmas and five shillings at Easter;

**48. CLERK v. MUSTREL.<sup>2</sup>**

[Voucher a garaunt. Eschaunges.]

Un<sup>3</sup> homme voucha a garaunt.

*Toud.* Qei avez de la garauntie?

*Ing.* Vostre pere, qi heir etc., dona ceus tenemenz a nous<sup>4</sup> pour teus tenemenz dount vous estez seisi.

*Toud.* Les tenemenz qe nostre pere dona furent del heritage nostre mere, qe ore est en pleyne vie,<sup>5</sup> qe resprit estat a terme de sa vie ove nostre pere des tenemenz pur ceux donez en eschaunges, issynt qe nous n'avoms riens tanqe après le decès de nostre mere. Et vous la purrez<sup>6</sup> par ceste r[espounse] avoir barré al bref qe ele<sup>7</sup> porte vers vous etc. Jugement.

*Inge.* La terre dount vous assignez l'eschaungez si ne sount qe iij. selions etc.<sup>8</sup>

<sup>1</sup> Mod. West Kimber.    <sup>2</sup> Text from *M*: compared with *P*.    <sup>3</sup> In *M* the beginning of this case is not divided from the end of the previous case.    <sup>4</sup> vous *P*; om. a nous *M*.    <sup>5</sup> Om. vie *P*; en vie et *M*.    <sup>6</sup> pussez *M*.    <sup>7</sup> bref qil *M*.  
<sup>8</sup> *Ins.* et ceo tesmoigne la chartre qe cy est *M*.



*Denom.* To that you cannot get, for you yourself attorned as sole tenant. We pray judgment whether you should have aid.

*Ingham.* [We] never attorned.

Issue joined.

**Note from the Record** (*continued*).

and Adam granted the rent and also the reversion of the tenements, which belonged to him after William's death, to Elias and his heirs, by his, Adam's writing, which he [Elias] proffers and which witnesses the same; and by reason of that grant William attorned himself to Elias for his fealty, and did fealty to him in William's messuage at Kempebeare, in the presence of Robert de Boneville and Richard of Holeweye and others; and because five shillings for the term of Michaelmas next before the taking were arrear to him, he took the beasts in the said place of Brademore, which is parcel of the tenements, within his fee, as well he might etc.

And William says that he never attorned himself to Elias for his fealty for the tenements, as Elias says; and he prays that this be inquired by the country.

Issue is joined, and a *venire facias* for jurors and the two named witnesses is awarded for the quindene of Easter.

On that day the sheriff did not send the writ, and a *venire facias sicut prius* is awarded.

**48. CLERK v. MUSTREL.<sup>1</sup>**

Warranty by reason of exchange. Equality.

A man vouched to warrant.

*Toudeby.* What have you for the warranty?

*Ingham.* Your father, whose heir [you are], gave the tenements to us [in exchange] for certain tenements whereof you are seised.

*Toudeby.* The tenements which our father gave were of our mother's inheritance, and she is still alive, and she retook an estate for life along with our father in the tenements given in exchange, so that we have nothing until after our mother's death. And you could have barred her by this answer in the writ which she is bringing against you etc.<sup>2</sup> Judgment.

*Ingham.* The land which you mention as an exchange was but three selions etc.<sup>3</sup>

<sup>1</sup> Proper names from the record, of which a note is printed in the Appendix.

<sup>2</sup> This very action was brought by the vouchee's mother.

<sup>3</sup> This assertion looks as if it should come from the vouchee. The selion is a ploughed ridge or bed.

*Stauntone.* Soit ceo de iij. selions ou de iiij. nous ne poems point entrer en la roule.

Mès furent <sup>1</sup> al issue qe nent d'eschaungez : prest etc.

Et alii e contra.

49. ANON.<sup>2</sup>

[Bref d'entré. Defaute. Damages.]

Un recovers par bref d'entré fondu sour la novele disseisine par defaute et pria d'enquere ses <sup>3</sup> damages.

*Staunt.* Vous n'averez pas <sup>4</sup> recoverer par juree de assise ne par pleder de vostre adversarie.

Set quia *Ber.* non fuit in banco, non precise negavit ei breve de dampnis set mandavit <sup>5</sup> irrotulari quod venit idem talis et petit dampna; et respectuavit.

Tamen alias in brevi mortis antecessoris que Nichole Huit' <sup>6</sup> porta vers Agnes sa seor, et ele dit qe N. autrefoitz porta un bref d'entré <sup>7</sup> d'autres tenemenz ou ele mist avaunt fet de relès etc., quel <sup>8</sup> il dedit, et demurt en banc nent trié, deinz queu fet ceux tenemenz sount compris, jugement si encountre le fet etc.

N. Nent <sup>9</sup> compris etc.

*Stant.* Pur ceo r[espouns] est le fet graunté; le quel, a ceo q'est dit, est dedit. Et nous ne poems savoir s'il y seit tiel fet ne si les tenemenz soient compris etc., et si nous preissoms tiel r[espouns] <sup>10</sup> sic erit finis in parte deducta <sup>11</sup> et in parte non. Par qei etc.

Et adiornantur in banco. Et in banco, deducto ut prius illo facto quiet[e]clam[acionis], vertebatur assisa in iuratum. Et preceptum fuit vicecomiti quod venire faceret iuratores et testes. Et pus Agnes fit defaute. Par qei le petit *cape* etc. Et pus fit defaute. Par qei ele perdi par defaute, pur ceo qe ceo fut trové hors de plè de assise. Et super hoc N. pria ses damages, que sibi neg[ata] <sup>12</sup> fuerunt par *Ber.* racione qua *Stant.* supra dixit. <sup>13</sup>

<sup>1</sup> sount *M.*    <sup>2</sup> Text from *M*: compared with *P.*    <sup>3</sup> des *P.*    <sup>4</sup> Vous naverez pas pur ceo qe vous navez pas *P.*    <sup>5</sup> precepit *P.*    <sup>6</sup> *Dubious M*; Balut (?) *P.*    <sup>7</sup> *Ins.* vers ly *P.*    <sup>8</sup> le quel *P.*    <sup>9</sup> N. ceux tenemenz nent *P.*    <sup>10</sup> nous pussoms tel r' receyvre *P.*    <sup>11</sup> predicta *M*; deducta *P.*    <sup>12</sup> negate *P.*    <sup>13</sup> *Ins.* etc. *P.*

STANTON, J. Were it three selions or four, we cannot put that upon the roll.

But they came to the issue 'not seised of the exchange: ready.'  
Issue joined.

#### 49. ANON.

Damages not given on a recovery by default.

One recovered in a writ of entry founded on the novel disseisin by default, and prayed an inquiry as to his damages.

STANTON, J. You cannot have it, for you have not recovered by a jury of assize nor upon your adversary's pleading.

But because BEREฟอร์ด, C.J., was not on the Bench, he did not straightway deny him a writ for damages, but had it enrolled that 'such an one came and demanded damages' and respited the case.

But on another occasion one Nicholas [Balut] brought a mortdancestor against Agnes his sister.<sup>1</sup> She said that he previously brought a writ of entry for other tenements, in which [action] she produced a deed of release, which he denied, and which remained untried in the Bench, and in that [deed] these tenements are comprised, and she prayed judgment whether against the deed etc.

*Nicholas.* Not comprised etc.

STANTON, J.<sup>2</sup> By that answer the deed is admitted, which, so it is said, was [previously] denied. And we cannot know whether there is such a deed, nor whether the tenements are comprised etc. And if we accepted this answer the [deed]<sup>3</sup> will be in part denied and in part not. Therefore etc.

They were adjourned into the Bench. And in the Bench, the deed of quitclaim having been denied, as before, the assize was turned into a jury. The sheriff was commanded to cause to come the jurors and witnesses. And Agnes made default. Therefore the petty *cape* [issued]. Then she made default. So she lost by default, as this was [held] to be outside the plea of assize.<sup>4</sup> Thereupon Nicholas prayed his damages. But BEREฟอร์ด, C.J., refused them for the reason given above by STANTON, J.<sup>5</sup>

<sup>1</sup> For this case see our vol. i. pp. 72-3.

<sup>2</sup> As justice of assize.

<sup>3</sup> Our books say 'fine.'

<sup>4</sup> So that there is no taking of an assize by default.

<sup>5</sup> In the case with which the reporter started.

50. ANON.<sup>1</sup>

[Quid iuris clamat. Attournement sanz fealté.]

Un A. conost<sup>2</sup> qe la terce partie de viij. s. de rente qe un W. tynt en noun de dowere de son heritage après la mort etc. remanissent a R. de R. par fyn etc. R. siwyt le *quid iuris clamat* vers W., qe vynt et dit qe pur ceo graunt ele ne se devoit attourner a ly, qar mesme cely A. eynz q'il graunta a dit R. etc. graunta mesme la revercioun a un S. a qy ele est attourné par my<sup>3</sup> graunt : jugement.

R. dit q'ele ne se attourna pas : prest etc.

L'enqueste dit qe ele se attourna a S. avaunt qe A. de cele terce partie graunta nule reversioun a R., issi q'ele paya sa rente etc., mès ele ne fit pas feauté.

*Herle.* De rente service<sup>4</sup> feauté fet attournement. Dount de l'oure q'ele n'ad pas fet feauté, par consequent nul attournement, qe paiement de rente purra estre de rente chargé etc.

*Toud.* Qaunt il fut seisi de la rente il pout avoir destreint pur la feauté. Jugement etc.

{*Ber.*<sup>5</sup> Tut seit la manere de ceinz qe celi qe deit attourner primes fra feauté, nichilominus<sup>6</sup> si put homme par paiement de rente fere attournement.

*Herle.* De la feauté vient la conis[aunce].}

*Berr.* De paiement de rente par le graunt cely de qy il tint<sup>7</sup> avaunt devient homme tenaunt le purchasour.

*Hervi.* Trové est etc. qe W. se attourna par le graunt etc. avaunt ceo etc. Par qey agarde la court qe R. prenge rien par son bref, eynz en la mercy, et W. a Dueu etc.; et qe R. siwyt bref de prendre le corps<sup>8</sup> A. pur ceo q'il avoit desceu la court.<sup>9</sup>

## 51. VENOUR v. BLUND.

Ou le purchasour des services avowa par suite sur le tenant, et le tenant mist avant chartre en barre etc.

I.<sup>10</sup>

William le Blueit<sup>11</sup> avowa sur Piere le Venour par la r[esoun] q'il tent de ly par homage, feauté et par escuage et par sute a sa court

<sup>1</sup> Text from *R* : compared with *M*, *P*.    <sup>2</sup> graunta *M*, *P*.    <sup>3</sup> *Ins.* son *M*.  
<sup>4</sup> De sa *M*.    <sup>5</sup> Substitute for last two speeches *M*, *P*.    <sup>6</sup> jalemeyns *P*.    <sup>7</sup> tut  
*R*; tent *M*.    <sup>8</sup> cas *M*.    <sup>9</sup> *Om.* et qe R. . . . court *P*.    <sup>10</sup> Text from *M* : com-  
pared with *P*, *R*.    Headnote from *Y*.    <sup>11</sup> de Blount *P*, *R*.



## 50. ANON.

Attornment by paying rent without fealty.

One A. confessed by fine that the third part of eight shilling-worths of rent which one W. held by way of dower of his heritage should after [her] death remain to R. de R. etc. He [R.] sued the *quid iuris clamat* against W. She came and said that she ought not to attorn to him upon this grant, for this same A., before he granted to R., granted the same reversion to S., to whom she attorned upon the grant. Judgment.

R. said that she did not attorn.

The inquest said that she did attorn to S. before A. granted the reversion of that third part to R., so that she paid her rent etc., but she did no fealty.

*Herle.* Of rent service fealty makes the attornment. So since she has not done fealty there is no attornment, for payment of rent may be of a rent charge etc.

*Toudeby.* When he was seised of the rent he might have distrained for the fealty. Judgment etc.

{BEREFORD, C.J.<sup>1</sup> Although it be the practice here<sup>2</sup> that he who is to attorn should first do fealty, nevertheless a man can make attornment by payment of rent.

*Herle.* The conusance comes from the fealty.<sup>3</sup>}

BEREFORD, C.J. A man becomes tenant to the purchaser by payment of the rent under the grant by him of whom he previously held.

STANTON, J. It is found that W. attorned on the grant before etc. Therefore the Court awards that R. take nothing by his writ, but be in mercy, and W. adieu; and that R. sue a writ to take the body of A. for that he has deceived the Court.

51. VENOUR *v.* BLUND.

*Semble* that the rule laid down by Stat. Marl. c. 9 can be asserted by the heir of the feoffee against a purchaser of the services who avows for suit of court, notwithstanding seisin of the suit.

## I.

William Blunt avowed on Peter Venour for the reason that he holds of him by homage, fealty, and by scutage and by suit to his

<sup>1</sup> An alternative for the last two speeches.    <sup>2</sup> That is, in court, when tenants attorn there.    <sup>3</sup> We may doubt whether the text be correct.

etc., dont il mesme etc. par la mayn cesti Piere; et pur la suyte arriere demi an etc.

*Toud.*<sup>1</sup> Pur suyte ne poiez avower, qe ceux tenemenz furent en ascon temps en la seisine un William le fitz R.,<sup>2</sup> et qe hors de sa seisine eneffa un nostre ael William le fitz Raufe de Fernun a tenir de ly par homage et forein service pur touz services deschargé de suyte; de W. descendit a R. com a fitz qe tent deschargé etc.; de Richard a Robert com a fitz qe tynt deschargé etc.; de Robert a nous com a fitz qe tut temps avoms tenu deschargé.<sup>3</sup> Jugement si pur suyte etc.

*Herle.* Nous avoms avowé de nostre seisine demene qe nous suffit en ceo plè<sup>4</sup> de possessioun. Et vous pledez auxi com vous voudrez par statut estre eidé. Dont si vous volez dire qe de temps limité vous et voz auncestres tenistes sans suyte fere, nous voloms averrer qe nous mesmes fumes seisi par vostre mayn demene.

*Denom.* Et nous qe nostre pere et nostre ael tindrent deschargés par la forme de<sup>5</sup> feffement: prest etc.

*Ber.* De qei tenistes vous et coment attourn<sup>6</sup> et coment avint il a les services?

*Denom.* W. le fitz R. graunta etc. a Is. de Mortameri,<sup>7</sup> qe lui graunta etc. en temps etc., de quel Is. nous tenoms deschargé.<sup>8</sup> Et demaundoms jugement.

*Scrop.* Et nous jugement del hure q'en tiel plè qe chiet en la possessioun avoms avowé de nostre seisine demene, la quele nous sumes prest de averrer.

*Staunt.* Del hure q'ele<sup>9</sup> se decharge de<sup>10</sup> cele temps et en<sup>11</sup> ceo dit qe vostre feffour Is. de M. nent seisi de suyte, et vous si par ly noun rien n'avez, par qei etc.

*Herle.* Pur hesser<sup>12</sup> la court nous vous dioms qe nous avoms ces services de un Is. la Blount,<sup>13</sup> la quele Is. fut seisi par my la mayn mesme cesti Pere de suyt: prest etc.

*Scrop.*<sup>14</sup> Il dit q'il<sup>15</sup> ne deit estre chargé mès solonc la forme de son feffement, de qei statut lui eide 'de secta quidem facienda'; qar de meillour condicioun ne devez estre qe ne serra W. le fitz Richard le feffour en qi persone la seute<sup>16</sup> prist sa nessaunce, ne<sup>17</sup> q'il poeit avoir lié sa seisine avant limitacioun del estatut<sup>18</sup> encountre le forme de feffement ne put il pur sute avower.

<sup>1</sup> Denum R.    <sup>2</sup> Ins. de F. P; ins. qe purrem' (?) M.    <sup>3</sup> Descent condensed P.    <sup>4</sup> bref P.    <sup>5</sup> Ins. ceo R.    <sup>6</sup> Om. et coment attourne P.    <sup>7</sup> Doubtful M; M. P; Isoude le Mortimer R.    <sup>8</sup> Or descharge.    <sup>9</sup> qil P, R.    <sup>10</sup> a R.    <sup>11</sup> ovesque P; ov R.    <sup>12</sup> eyser P.    <sup>13</sup> Isoude le Mortimer R.    <sup>14</sup> Ins. Justice P, R.    <sup>15</sup> Om. dit qil P.    <sup>16</sup> persone ceste seygnurie P.    <sup>17</sup> mes R.    <sup>18</sup> nessaunce mes sil ne pout avoir lye la seisine avaunt la limitacioun P.

court etc., of which he [was seised] by the hand of this Peter; and for suit arrear half a year [he avows] etc.

*Toudeby.* For suit you cannot avow, for at one time these tenements were in the seisin of William, the son of R[enald]; and he out of his seisin enfeoffed our grandfather, William, the son of Ralph of Fernun, to hold of him discharged of suit by homage and the forinsec service for all services. From William [the right] descended to Richard as son, who held discharged; from Richard to Robert as son, who held discharged etc.; from Robert to us as son; and we have always held it discharged. Judgment, whether for suit [he can avow].

*Herle.* We have avowed on our own seisin, which is sufficient for us in this possessory plea. And you plead as if you wish to be aided by statute.<sup>1</sup> Therefore, if you will assert that since the time limited you and your ancestors held without doing suit, we will aver that we were seised by your own hand.

*Denom.* And we that our father and grandfather held discharged by the form of the feoffment: ready etc.

BEREFORD, C.J. Of whom do you hold, and how attorned, and how did he come by the services?

*Denom.* William the son of R[enald] granted them to Isabel Mortimer, who granted them to him etc. in the time etc.; and of Isabel we hold them discharged.<sup>2</sup> And we demand judgment.

*Scrope.* And we judgment, since in such a plea as this, which lies in the possession, we have avowed on our own seisin, which we are ready to aver.

STANTON, J. Since he discharges himself at that time, and further says that your feoffor [Isabel de Mortimer] was not seised of the suit, and, save from her, you have nothing, therefore etc.

*Herle.* To ease the Court, we tell you that we have these services of one Isabel Blunt, and this Isabel was seised of the suit by the hand of this Peter: ready etc.

SCROPE, J. He says that he ought not to be charged except according to the form of his feoffment; therefore the Statute 'de secta quidem facienda' aids him; for you ought not to be in a better position than William the son of [Renald] the feoffor would be, in whose person this [seignory] took its rise; and unless [you] could lay [your] seisin before the time limited by Statute, [you] cannot avow for suit against the form of the feoffment.

<sup>1</sup> Probably referring to Stat. Marl. c. 9.

<sup>2</sup> Or perhaps 'we hold a discharge.'

*Herle.* Le fet<sup>1</sup> qe n'est le fet nostre feffour ne nul des ses auncestres ne noz auncestres ne nous barre, del hure qe nous demaundoms par my Sarr.<sup>2</sup>

*Pass.* Ne semble pas de<sup>3</sup> hure qe nous dioms qe nous mesme seisi par my sa mayn et auxi nostre feffour, de qi seisine<sup>4</sup> si nous fussions empledé de autre de ceux par la garrauntie en quele nous est tenu a la garrauntie nous averoms<sup>5</sup> a la value de cele suyte ; dont ne semble pas qe par l'allegger feffement de autre qe de nous etc. ou de ly etc., del hure qe nous voloms averrer sa seisine,<sup>6</sup> seroms barré de ceo qe par my ly serroms garraunti.<sup>7</sup>

Et pus<sup>8</sup> *H. Scrop*<sup>9</sup> dit qe<sup>10</sup> potuit<sup>11</sup> exhonerare per breve de statuto 'ne quis distringatur ad sectam.'<sup>12</sup>

*Ber. al pleintif.* Sount voz avers delivers ?

Sire, oyl.

*Et pus al defendaut.* Et vos services arrere et processe qe de suyte par statut est ordeiné ne voilletz suyr dont la demurer est a vostre damage.<sup>13</sup>

Et sic adiornatur etc.

## II.<sup>14</sup>

Peres le Vencur se pleint de W. le Blunde de ceo qe atort prist ces avers.

*Scrop.* W. avowe la prise etc. par la r[eson] q'il tient de lui un demi fee de chivaler par homage e fealté e pur suite a sa court de Bultone de iij. semeines en iij. semeines ; des queux services il fut seisi par mi la main Peres com par mi la main sun verrei tenant. Et pur la suite arere par un demi an devant le jour de la prise issi avowe etc. e en sun fee.

*Herle.* Pur suite sur nous ne puet il avoverie faire par la r[eson] qe W. le fiz Ren[ald] fut seisi de cel demi fee de chivaler, qe hors de sa seisine enfeffa A. nostre besael a tenir de lui e de ses heirs par homage, fealté e escuage, scilicet qaunt l'escu curt a xl. souz, xx. souz, saunz suite. De A. descendit le droit a C. com a fiz e heir ; de C. a<sup>15</sup>

<sup>1</sup> f[ = feffement ] *P.*    <sup>2</sup> my ly qy fet ceo est *P.* ; my etc. *R.*    <sup>3</sup> Il semble del *P.*  
<sup>4</sup> feffour dount *P.*    <sup>5</sup> empledé de ceux servitz, nous averoms la garauntie de  
ceux en la quele ele nous est tenu et *P.*    <sup>6</sup> *Ins.* et la nostre *R.*    <sup>7</sup> ceo dount  
devoms par my ly estre gar' *P.*    <sup>8</sup> *Om.* Et pus *P.*    <sup>9</sup> *Scrop Justice P.*    <sup>10</sup> quod  
non *P.* ; Et opinio *Scrop* fuit quod *R.*    <sup>11</sup> *Ins.* se *P.*    <sup>12</sup> *Om.* ne . . . sectam *P.*  
<sup>13</sup> Suez de avoir voz serviz par proces de statut qe a demorer la est a vostre peril.  
Et sic ad iudicium *P.*    <sup>14</sup> Text from *Y* (f. 171d.).    <sup>15</sup> e or et *Y.*



*Herle*.<sup>1</sup> The deed, which is not the deed of our feoffor, nor of any of [our feoffor's] ancestors, nor of our ancestors, does not bar us, since we do not demand anything through him whose deed this is.<sup>2</sup>

*Passeley*.<sup>3</sup> It seems to me that since we say that we ourselves were seised by his hand, and that so was our feoffor, from whom we should have an equivalent for this suit, by reason of the warranty in which he is bound to us, if we were impleaded by a third person—it seems to me [I say] that we shall not be barred from that which he [our feoffor] is bound to warrant us, by any feoffment that is neither ours nor his, since we are willing to aver his [and our] seisin [of the suit].

And afterwards H. SCROPE, J., said that [the tenant] might<sup>4</sup> be discharged by a writ under the Statute 'that none be distrained for suit.'

BEREFORD, C.J., to the plaintiff: Are your beasts delivered?

[*For the plaintiff*.] Yes, Sir.

[BEREFORD, C.J.] to the defendant. [Sue to have your services] by the process ordained by Statute,<sup>5</sup> for to demur at this point would be perilous for you.

And so they were adjourned.

## II.

Peter Venour complains of William Blount that wrongfully he took his beasts.

*Scrope*. William avows the taking etc. for the reason that he holds of him half a knight's fee by homage and fealty and suit at his Court of Bulton every three weeks; and of these services he was seised by the hand of Peter as by the hand of his very tenant. And he avows for the suit arrear half a year before the day of the taking etc. and in his fee.

*Herle*. For suit he cannot avow on us, because William the son of Renald was seised of this half knight's fee, and out of his seisin he enfeoffed A. our great-grandfather to hold of him and his heirs by homage, fealty, and scutage; to wit, when the scutage runs at forty shillings, twenty shillings, without suit. From A. the right descended to C. as son and heir, from C. to D. as son and heir. They held the

<sup>1</sup> The books which give this version of the case become divergent and obscure.

<sup>2</sup> The maker of the deed may be their predecessor in title, but is not their immediate predecessor.

<sup>3</sup> The text of this speech is very difficult. We hope that the drift of it has been caught.

<sup>4</sup> But one book says 'could not'; and such was the later law. See Sec. Inst. 118: 'this writ lieth only between privies.'

<sup>5</sup> Referring to the last part of Stat. Marl. c. 9, which gave the lord a statutory action for suit of court withdrawn.

D. com a fiz e heir. Les queux tiendrent les tenemenz tut lour temps deschargez de suite. De D. a E. com a fiz ; de E. a P[eres] qe ore se pleint com a fiz. (Et A.<sup>1</sup> mist avant chartre de feffement qe ceo tesmoigne.) Et demandoms jugement si pur suite arere puisse avower.

*Scrop.* Nous avoms dit qe nous sumes seisi de la suite par my vostre main etc.

*Herle.* Cele seisine nous ne deit grever en contre la forme de nostre feffement, car coment qe vous pledez a la possession, nous pledoms a defaire l'avowerie en le droit par forme del statut.

*Scrop.* Vous biez estre deschargé de la suite par mie une chartre a qei nous ne poems estre partie a conustre ou dedire pur ceo qe nous sumes estranges. Et demandoms jugement si de nostre seisine ne poems avowerie faire.

*Denham.* Nous sumes feffez a tenir les tenemenz deschargez. Et demandoms jugement si en contre la forme de nostre feffement devom estre chargez.

*Bereforde.* Vous dites qe vous estes feffé de tenir de qi ? Qar il covent qe vous tenez de ascon seignur etc.

*Denham.* W. le fiz Reinalde qe feffa nos auncestres a tenir de lui e de ses heirs aliena cele seignurie a Maut le Mortimer ; la quele Maude fut seisi de ses services sanz suite faire par my la main nostre besael e nostre ael devant le passage le Roy H[enri] en Bretaigne etc. e pus. E demandoms jugement etc. Et s'il voet dedire, prest etc.

*Scrop.* Nous dioms qe une Is[abel] la Blunde fut seisi de ses services ensemblement ove la suite par mi vostre mein e la main vostre pere com par mi la main son verray tenant. La quele Is[abel] nous granta ceux services ; par queu grant vous atturnastes ; e issi nous seisi de la suite e des autres services ; e prest del averer. E demandoms jugement, desicom nostre fefferesce fut seisi de cele suite e nous meisme, si nous ne puissoms avowerie faire sanz estre barrez par autrui chartre a qei nous ne poems estre partie.

*Scrop.* Jeo vous moustre qe nous serrom resceu al estat nostre fefferesce a pleder, qar autrement perdriom nostre garantie vers les heirs Is[abel] si nous sun estat ne poems pleder.

*Ber. a Denham.* Avisez vous tanke a lundy coment vous poez estre aidé par le *contra formam feoffamenti*.

Quo die *Hervy*. Vous avez avowé par la r[eson] qe vous fustes seisi de la suite ; e pus dites outre qe vostre fefferez fut seisi par mi la main sun pere e par mi sa main ; e a la chartre q'il met avant vous

<sup>1</sup> Om. A. (?)

tenements all their time free from suit. From D. to E. as son ; from E. to Peter, the plaintiff, who now complains, as son. (And he produced the charter of feoffment which testifies this.) And we demand judgment whether he can avow for suit arrear.

*Scrope.* We have said that we are seised of the suit by your own hand.

*Herle.* This seisin cannot hurt us against the form of the feoffment, for albeit you plead to the possession, we plead to defeat the avowry in 'the right' by the form of the Statute.

*Scrope.* You desire to be discharged of suit by a charter, and we cannot be a party to admit or deny it, because we are strangers to it. And we demand judgment whether we cannot make avowry on our seisin.

*Denom.* We are enfeoffed to hold the tenements discharged. And we demand judgment whether against the form of our feoffment we ought to be charged.

BEREFORD, C.J. Of whom do you say you are enfeoffed to hold ? For you must hold of some lord etc.

*Denom.* William the son of Renald, who enfeoffed our ancestors to hold of him and his heirs, alienated this lordship to [Isabel] Mortimer. She was seised of the services without suit by the hand of our great-grandfather and grandfather before the voyage of King Henry into Brittany etc. and afterwards. And we demand judgment etc. And if he will deny, ready etc.

*Scrope.* We say that Isabel Blunt was seised of these services together with the suit by your hand and the hand of your father as by the hand of her very tenant. This Isabel granted us these services ; by this grant you attorned ; and so we are seised of the suit and the other services ; and we are ready to aver it. And since our 'feofferess' and we ourselves were seised of this suit, we demand judgment, whether we cannot avow without being barred by someone else's charter to which we cannot be a party.

*Scrope.* I show you that we shall be received to plead the estate of our 'feofferess,' for otherwise we should lose our warranty against the heirs of Isabel, if we cannot plead her estate.

BEREFORD, C.J., to *Denom.* Consider until Monday how you can be aided by the *contra formam feoffamenti*.

On that day STANTON, J. : You have avowed on the ground that you were seised of the suit, and then you go on to say that your 'feofferess' was seised by the hand of his father and by his hand ; and to the charter that he produces you cannot be a party because

ne poez estre partie pur ceo qe vous estes estrange, qe lour auncestres ont tenu ceux tenemenz touz jours deschargez devant le passage e après de cele suite en temps lour feffour e en temps Maude de Mortimer.

*Hervy.* Tendez voz jugemenz a la xv<sup>me</sup> de Saint Hillarie.

*Quo die Willuby.* Vous avez bien entendu coment W. le Blund ad avowé sus Peres le Venour pur suite arere e ceo trovez par record. E a ceo vous dioms qe nos auncestres sunt feffez (*ut supra*) sanz suite faire. E demandoms jugement si encontre forme de statut puissent avowerie faire.

*Touth.* Qui r[espount] il a nostre possession ?

*Will.* A ceo n'avom mie mestier a r[espondre] del houre qe nous voloms averer qe vous ne nul de vos auncestres ne les auncestres vostre feffour ne fut seisi devant le passage etc.

*Touth.* Vous ne poez sur une destresce ceste service trier, qar plus naturellement girreit le *contra formam feoffamenti* en ceo cas.

*Willuby.* Ne dit le statut q'il ne soit destreint encontre la forme de son feffement ? Par quei auxibien est nostre remedie a defaire l'avowerie par cesti brefe com par le *contra formam feoffamenti* etc.

*Ber.* Jeo pose qe W. voleit granter les services Peres a un estrange ; e Peres veneist par *per*<sup>1</sup> *que servicia* en court ; e demandé lui fuist par la court par qe services il cleime etc. tenir de W. ; e il deit q'il cleime tenir de W. par les services de un fee de chivaler, scilicet par homage e escuage ; e de ceo meist avant la chartre q'il ore mette, jeo entenke q'il serroit resceu a defere l'attournement pur la suite. Issi me semble il de ceste part.

*Touth.* Nous ne pledoms mie la en droit etc.

*Ber.* Parlez de pees tanke a demain. Car lealment pledez la en droit ou cea en droit. Nous froms une lei par my tote la terre de tele avowerie. Un malvois ribaut baillif ou hayward par cohercion fra un povre 'om fere une suite, e issi demurra chargé a touz jors par cele fausse possession etc.

*Denham.* Vous avez bien entendu coment il out avowé, a quei nous avom dit qe a tiele avowerie ne pount il estre resceu encontre la forme de nostre feffement.

*Herle.*<sup>2</sup> Nous avom avowé de nostre seisine demene, e nostre

<sup>1</sup> *Om.* per Y.

<sup>2</sup> *Sic* Y.



you are a stranger to it. [And they say that]<sup>1</sup> their ancestors have always held these tenements discharged of this suit before the voyage [to Brittany] and afterwards in the time of their feoffor and of [Isabel] Mortimer.

STANTON, J. Await your judgments till the quindene of Hilary.

On that day *Willoughby*. You have heard how William Blunt has avowed on Peter le Venour for suit in arrear, and that you find by record. And to this we say that our ancestors are enfeoffed as above without doing suit. And we demand whether against the form of the Statute they can make avowry.

*Toudeby*. What does he answer to our possession?

*Willoughby*. To that we need not answer, as we wish to aver that neither you, nor any of your ancestors nor any of the ancestors of your feoffor, were seised before the voyage [to Brittany].

*Toudeby*. You cannot try this service in an action on a distress, for the *contra formam feoffamenti* would more naturally lie in this case.

*Willoughby*. Does not the Statute say that he shall not be distrained against the form of his feoffment? So our remedy is to defeat an avowry by this writ as well as to [bring action] by the *contra formam*.

BEREFORD, C.J. I put case that W. wished to grant the services of Peter to a stranger, and Peter came into Court by the *per quae servitia* and was asked by the Court by what services he claims etc. to hold of W.; and he said that he claimed to hold of W. by the services of a knight's fee, to wit, by homage and scutage; and for this he produced the deed which he now produces. I take it that he would be received to defeat the attornment for the suit. So it seems in this case.

*Toudeby*. We are not here pleading in 'the right.'

BEREFORD, C.J. Talk about a compromise until to-morrow, for, as a matter of law, you are pleading about 'the right' in one way or the other.<sup>2</sup> And by [a decision on] this avowry we shall make a law throughout all the land. A bad rascal of a bailiff or hayward by duress might cause a poor man to do suit, and thereby he would remain charged for all time through this false possession.

*Denom*. You have heard how they have avowed; to which we have said that they cannot be received to such an avowry against the form of our feoffment.

*Herle*.<sup>3</sup> We have avowed on our own seisin, and our feoffor was

<sup>1</sup> Some such words seem to be wanted. Stanton is rehearsing the pleadings at the end of the day.

<sup>2</sup> A conjectural translation.

<sup>3</sup> But see above.

feffour seisi par mi vostre main e la main le feffour vostre feffour e par mi la main voz auncestres etc. Jugement etc. Et vous mesme en agreant cele possession a nous estes attourné. Jugement etc.

*Inge.* Pur service qe est en le droit a qe il vous pledent par forme de statut, qe dit qe nul soit distreint encontre la forme de sun feffement e a ouster cele torcenouse destresce, si fut le statut ordiné; car un canoun defet plussours leis; auxi le statut defet plussours choses qe sunt a la comune lei.

*Herle.* Il mesme est a nous attourné de gree: jugement etc.

*Ber. a Herle.* Vous veez mie vostre reson dem[eine], qar tut soit il attourné a vous com tenant, il ne suit nent q'il soit attourné des torcenouses services faire etc.

*Inge.* Si jeo vous eusse granté le homage e les services un tenant, e il venist en court par le *per que servicia*, e s'il deit q'il ne tient nent del conissour par tieu service, il serroit bien resceu a dire q'il ne tient mie par tieu service etc.: ergo etc.

*Ber.* Volez vous l'averement qu'il vous tendent, ou noun?

Et in fine *Herle.* Qe W. le Blund e touz les autres seignurs qi estat il ad ont esté seisi de cele suite par mi la main Peres e ces auncestres e touz les autres tenans devant le passage le Roi H[enri] en Bretagne.

Et alii contrarium etc.

*Bereford.* Xx. anz passé ne vient si bone lei en Engleterre pur povere gentz.

*Ber. a Touth.* Jeo vous face une demande: Si l'estatut de Marleberge qe dit qe nul soit distreint a suite faire encontre la forme de sun feffement serra glosé ou ne mie? E s'il ne soit glosé par autre entendement qe nous n'entendoms, il semble qe le r[espouns] P[eres] a defere ceste avowerie est suffisant del houre q'il est prest del averer solom forme del statut etc.

Et dies datus est inde de iudicio suo audiendo in octabis Sancte Trinitatis.<sup>1</sup>

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 212d, Rutland.

William le Blund was summoned to answer Peter le Venur of a plea wherefore he, together with Ralph Willames baillyf le Blund, took a cow of Peter's and unlawfully detained her against gage and pledges etc. And thereupon Peter, by Robert of Luffenham his attorney, says that on [Nov. 6, 1309]<sup>2</sup> Friday the feast of St. Leonard in A.R. 3, in the vill of

<sup>1</sup> This sentence is struck out Y.    <sup>2</sup> This is the feast, but it fell on a Thursday.

seised by your hand and the hand of the feoffor of your feoffor, and by the hand of your ancestors etc. Judgment etc. And you, agreeing to this possession, have attorned to us. Judgment etc.

*Ingham*.<sup>1</sup> [You avow] for a service which is in 'the right'; and to that they plead by form of the Statute which says that no one shall be distrained against the form of his feoffment. And the Statute was ordained to oust this wrongful distress; for one canon annuls divers *leges*,<sup>2</sup> so also the Statute annuls divers things which were by the common law.

*Herle*. He has voluntarily attorned to us. Judgment etc.

BEREFORD, C.J., to *Herle*. You do not see [the end of] your own argument, for though he has attorned to you as tenant, it does not follow that he has attorned to do wrongful services etc.

*Ingham*. If I had granted the homage and services of a tenant to you, and he came into Court by the *per quae servitia*, and said that he does not hold of the conusor by such service, he would be admitted to say that he does not hold by such service. So etc.

BEREFORD, C.J. Will you take the averment that they offer you?

And in the end *Herle*: William Blunt and all the other lords whose estate he has have been seised of this suit by the hand of Peter and his ancestors and all the other tenants before the voyage of King Henry into Brittany.

Issue joined.

BEREFORD, C.J. For twenty years past there has not come into England so good a law<sup>3</sup> for poor people.

BEREFORD, C.J., to *Toudeby*. I put you a question: whether the Statute of Marlborough, which says that no one shall be distrained to do suit against the form of his feoffment, shall be glossed or not? And if it is not to be glossed by some other interpretation than ours, it seems that the answer of Peter to defeat this avowry is sufficient, since he is ready to aver it according to the form of the Statute etc.

{And<sup>4</sup> a day was appointed for hearing their judgment on the octave of Trinity.}

#### Note from the Record (*continued*).

Beltone,<sup>5</sup> in the place called le Westbrokfurlonge, William, together with etc., took the said cow of Peter's and unlawfully detained her against gage and pledges etc. until etc.: damages, sixty shillings. And thereof he produces suit. (*Note continued on next page.*)

<sup>1</sup> Or possibly Inge.

<sup>2</sup> A bit of canonistic lore.

<sup>3</sup> Meaning apparently the point that has been decided.

<sup>4</sup> This sentence is cancelled, and should, we think, be disregarded.

<sup>5</sup> On the border of Leicestershire.<sup>32</sup>

Note from the Record (*continued*).

And William, by Richard of Bykertone his attorney, comes and defends tort and force when etc.; and he avows the taking: and lawfully, for he says that Peter holds of him a moiety of the manor of Beltone with the appurtenances by homage and fealty and the service of a moiety of one knight's fee, to wit, of twenty shillings to the king's scutage of forty shillings when it shall occur and so in proportion, and of doing suit to William's court of Beltone from three weeks to three weeks; and of these services William was seised by the hands of Peter as by the hands of his very tenant; and because the suit was arrear to him for a half-year before the day of the taking, he took the cow in the said place, in his fee etc., as well he might etc.

And Peter says that William cannot avow the taking lawful for the suit, for he says that the tenements were sometime in the seisin of William son of Reginald de Fresnei; and thereof he by his charter enfeofed William son of Ralph de Fresnei, ancestor of Peter, whose heir he is, to hold to him and his heirs of William son of Reginald and his heirs by hereditary right, for his homage and service, saving the service of the King and of his lord, of whom William son of Reginald held his fee; and he proffers a charter under the name of William son of Reginald, which witnesses this; and he says that all his ancestors from the time of the feoffment until the voyage of Henry [III.] into Brittany, and at that time and after, held the tenements according to the form of the charter, of William son of Reginald and his heirs, and also of one Isabella de Mortimer, to whom the services of Peter's ancestors were assigned, by homage and fealty and the service of a moiety of a knight's fee for all service, without doing any suit therefor etc.; and this he is ready to aver; and thereof he prays judgment etc.<sup>1</sup>

And William says that he purchased Peter's services for the tenements from one Isabella la Blunde, of whom Peter held the tenements immediately etc.; and that she was seised of the suit by Peter's hands; and likewise he, William, was seised of the suit by Peter's hands, as appears by the form of his avowry; and this seisin Peter cannot deny; and he [William] prays judgment whether Peter by this plea of detention of beasts, which is merely possessory, ought to discharge himself from the suit in this behalf.

A day is given them to hear their judgments here in the octave of Hilary, saving to the parties their arguments to be alleged on the one side and the

52. ANON.<sup>2</sup>

[Fine. Rent chargee.]

Agneys conust les tenemenz etc. estre le droit Rauf cum ceux etc. Et pur cele reconisaunce R. graunta a Agneys des ditz tenemenz un mees, vij.<sup>3</sup> acres de terre, ij. acres de pree, vj. s. de rente, et ly rendy

<sup>1</sup> The word 'cras' is here written in the margin of the roll.\*

<sup>2</sup> Text from *P*: compared with *M*.

<sup>3</sup> xij. *M*.



Note from the Record (*continued*).

other. [Process is continued and on the quindene of Trinity a day is given three weeks from Michaelmas 'as the judgment is not etc.']

Afterwards at that day, to wit, three weeks from Michaelmas in A.R. 5, came the parties by their attorneys.

And Peter says further that William cannot discharge himself from having unlawfully distrained him for the suit, for he says that in the King's Statute published at Marleberge it is contained that henceforth none who is enfeoffed by charter be distrained to make suit to the court of his lord unless he is specially bound by the form of his feoffment to do that suit, except nevertheless those whose ancestors or they themselves were wont to do such suit before the voyage of Henry [III.] into Brittany; and he says that he is ready to aver as the Court shall award that neither he, Peter, nor his ancestors, tenants of the tenements, from the time of the feoffment and before the said voyage ever were wont to do the suit; and to this averment William does not answer, nor does he care to admit it etc.; and thereof he prays judgment etc.

And William says that he has no need to answer in this behalf to the said averment that Peter tenders him, especially as he [Peter] is altogether a stranger to William son of Reginald, by whose deed Peter strives to preclude him, William le Blunde, from the suit; and also because he, William le Blunde, is ready to aver that as well he as Isabella la Blunde, his feoffress (*feoffatrix*) of the services, were seised of the suit by the hands of Peter, and likewise Isabella de Mortimer, the feoffress of Isabella la Blunde of the same services etc., was seised of the suit for the tenements by the hands of Peter, and these seisins, so it seems, ought to suffice him as a lawful title to distrain etc.; he says also that by pretext of the said Statute no help can be given to Peter to discharge himself of the suit by way of a replevin of beasts etc., but that if injury be done to him in this behalf, then rather a remedy would be competent to him by a writ of trespass founded on the said statute etc.; and thereof he prays judgment etc.

Afterwards William answers further and says that Peter's ancestors both before and after the said voyage were wont to do the suit to the said court for the tenements etc.; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the morrow of the Purification.<sup>1</sup>

## 52. ANON.

Fine involving creation of a rent charge.

Agnes confessed the tenements to be the right of Ralph as those [that he had of her gift]. And in return for this conusance R. granted to Agnes of the said tenements a messuage, seven acres of

<sup>1</sup> In this year another writ of replevin was brought against William le Blund by one Gilbert of Bere for a distress in

Netherhamme in Somerset (De Banco Rolls No. 183, Roll 58d.)\*

etc., a avoir et tener etc. a tote sa vie de R. et de cez heirs, fesaunt a R. etc. une rose par an. Estre ceo R. graunta a A. de remenaunt des tenemenz vj.<sup>1</sup> mars par an a terme de sa vie, issi qe quel houre qe les vj.<sup>2</sup> mars furent arere qe lyt<sup>3</sup> a A. a entrer en les tenemenz en qi meyns etc. Et qe après le decès A. qe les tenemenz returnereyent a R. et ces heirs et la rente soit esteynte.

53. ANON.<sup>4</sup>

Nota ou il voleit avoir abatu le bref par joint feffement saunz especialté.

La ou le bref fut porté vers le baroun.

*Ing.*<sup>5</sup> Nous avoms<sup>6</sup> rien si noun joynt ove nostre femme, nent nomé en bref. Jugement etc.

*Hedone.* Coment; est ceo son heritage ou son<sup>7</sup> purchaz? Dites coment.

*Ing.*<sup>8</sup> Ele est joynt etc.<sup>9</sup>

*Hedone.*<sup>10</sup> Ceste excepcioun veut estre prové par fet. Dount de l'oure qe vous ne mostrez nul fet etc. jugement.

*Ing.*<sup>11</sup> Prest etc. par pais. A tiel averement fut receu Edward Charles etc.

*Stantone.* N'est pas semblable<sup>12</sup> qe la fut la<sup>13</sup> femme ov ly taillé par le remayndre. Dount pur ceo qe le fet demoura vers<sup>14</sup> cely en qy persone la taille commença,<sup>15</sup> fut receu l'averement. Dount n'est pas issy en ceo cas, qe si vous seiet purchasour le fet demurt vers vous.

*Cant.* Possible est qe eux purchacerent sanz chartre.

*Frisk.* S'il la eusent perdu, si ne dut pas la femme<sup>16</sup> perdre pur ceo son estat.<sup>17</sup>

*Wilby.* Si ele priast de estre receu etc., ele ne serreit pas sanz fet receu. Par qey etc.

Hoc creditur<sup>18</sup> esse falsum si fuisset in brevi nominata; <sup>19</sup> si <sup>20</sup> non, licet habuit et protulit factum, non <sup>21</sup> est admittenda secundum cursum nunc.

*Ing.*<sup>22</sup> fut chacé<sup>23</sup> a dire autre chose. Et voucha etc.<sup>24</sup>

<sup>1</sup> v. M.    <sup>2</sup> v. M.    <sup>3</sup> list M.    <sup>4</sup> Text from R: compared with M, P, B. Headnote from B.    <sup>5</sup> Denom M, P, B.    <sup>6</sup> avowoms R.    <sup>7</sup> Johan R.    <sup>8</sup> Denom M, P.    <sup>9</sup> feffe M, P.    <sup>10</sup> Om. this speech M.    <sup>11</sup> Hedone M; Denom P, B.    <sup>12</sup> merveille M, P, B.    <sup>13</sup> sa B.    <sup>14</sup> ove M, B.    <sup>15</sup> primes taill' M, B; primas taille P.    <sup>16</sup> duist il B.    <sup>17</sup> droit M, B.    <sup>18</sup> credo P.    <sup>19</sup> End of note P.    <sup>20</sup> sed B.    <sup>21</sup> habuerit et protulerit B.    <sup>22</sup> Denom M, P; om. Ing. B.    <sup>23</sup> Ins. par statut M, B.    <sup>24</sup> End of case P.

land, two acres of meadow, six shillingworths of rent, and rendered them to her [in this Court], to have and hold for her life of R. and his heirs, [rendering] to R. etc. a rose annually. Moreover R. granted to A. from the residue of the tenements six marks a year for her life, so that if they were at any time arrear, it should be lawful for A. to enter the tenements in whosoever hands etc. And after A.'s death the tenements were to return to R. and his heirs and the rent was to be extinguished.

53. ANON.<sup>1</sup>

Writ not abated by a plea of joint feoffment without specialty.

A writ was brought against a husband.

*Ingham*.<sup>2</sup> We have nothing unless jointly with our wife, who is not named in the writ. Judgment etc.

*Hedon*. How is that? Is it her heritage or her purchase? Say how.

*Ingham*. She is jointly enfeoffed.

*Hedon*. This plea should be proved by deed. So since you show no deed, judgment.

*Ingham*. Ready [to aver] by the country. Edward Charles was received to such an averment.<sup>3</sup>

STANTON, J. Not a like case, for there the wife was tailed with him by a remainder. Therefore, because the deed remained with the person in whom the tail began,<sup>4</sup> the averment was received. But that is not the case here, for if you are the purchaser, the deed remains with you.

*Cambridge*. It is possible that they purchased without charter.

*Friskeny*. If they have lost [their charter], the wife ought not therefore to lose her right.

*Willoughby*. If she prayed to be received etc., she would not be received without a deed. Therefore etc.

This is believed to be untrue if she be named in the writ; and if she be not, then according to the present practice she is not to be received.

*Ingham* was driven <sup>5</sup> to plead over; and he vouched etc. And it

<sup>1</sup> This case appears in the Old Edition, p. 86.

<sup>2</sup> Or Denom.

<sup>3</sup> See *Boys v. Charles* in our vol. ii. p. 168.

<sup>4</sup> We should say 'the tenant of the particular estate.'

<sup>5</sup> Some books say 'by statute,' i.e. by Stat. de Coniunctim Feoffatis, 34 Edw. I.

Et mirum fuit quod Edwardus Charles fuit r[ecueu] de averer l'estat en le remeyndre par pays, de l'oure<sup>1</sup> qe si eux ussent esté demaundaunts, sanz fet eux ne pount<sup>2</sup> avoir usé cest actioun etc.

## 54. WILLOUGHBY v. QUENEBY.

Fourme de doun ou chartre symple fuist fait a celui qe avoit fee taillee; et fust receu d'averer en countre le fait soun pere q'il avoit fee taillee.

I.<sup>3</sup>

En un bref de forme de doun.

*Herle pro tenente.* Un S. dona iij. vergés de terre parcel de sa demaunde a nostre baroun et a nous et a nos<sup>4</sup> heirs de nostre corps engendrez; et avoms issue un Johan, en qy le droit est par la taille etc., saunz qy etc.; et prioms eyde. Et en droit de une demie vergé de terre, mesme cesti S. dona a nostre baroun et a nous a avoir et a tenir et a les heirs nostre baroun,<sup>5</sup> ensi qe nous n'avoms etc. mesqe a terme de vie etc. del heritage E. fitz et heir S., sanz qi etc., et prioms eyde etc.

Et concessum est auxilium sine contra placito.<sup>6</sup>

*Herle.* Qey avez vous de la forme?

*Wilby.* Prest etc.

*Herle.* A ceo ne devez estre r[esceueu], qe la ou vous dites qe William de Quenoby<sup>7</sup> dona en forme taille a R. de Quenoby<sup>8</sup> et a M. sa femme, de qi vous estes issue, veet issi le fet William de Queneby,<sup>9</sup> qe testmoigne q'il dona en fee simple a R. soul, et ove<sup>10</sup> ceo nous vous dioms qe vous estes heir W. Jugement si d'averer le contrarie devet estre resceueu.

*Wilby.* Loy nous doune d'averer<sup>11</sup> la forme; et nous ne demaundoms pas par la revercioun; dount nous<sup>12</sup> ne avoms rien a fere du fet W., qe nous ne demaundoms pas par my ly ne com son heir etc.

*Hervi.* Il put estre qe après la chartre de la taille q'il ust fet chartre simple. Et il demaunde pas com heir de revercioun. Dount il covent qe l'averement etc.

*Herle* graunta etc.<sup>13</sup>

<sup>1</sup> Om. de loure B. <sup>2</sup> poieient B. <sup>3</sup> Text from R: compared with M. Headnote from B. <sup>4</sup> les M. <sup>5</sup> a avoir et a nous barr' M. <sup>6</sup> placita R; sanz countrepleder M. <sup>7</sup> qe W. M. <sup>8</sup> Quiby M. <sup>9</sup> fet de J. M. <sup>10</sup> enqueste R; ove M. <sup>11</sup> de rec' M. <sup>12</sup> et vous dem' pas respond' nous M. <sup>13</sup> Herle vidit quod oportet concedere reversionem: concessit M instead of last two paragraphs.



was strange that Edward Charles was received to aver by the country an estate in remainder, since, if [he and his wife] had been demandants, they could not have brought action without deed.

#### 54. WILLOUGHBY *v.* QUENEBY.<sup>1</sup>

Formedon in descender. Demandant suffered to aver gift in tail against tenant who produces charter of the alleged donor. Tenant in tail cannot have aid of his issue.

#### I.

Writ of formedon.

*Herle* for the tenant. One S. gave three virgates of land, parcel of the demand, to our husband and us and our heirs of our bodies begotten; and we have issue one John, in whom 'the right' is by the tail and without whom etc., and we pray aid. And as to a half virgate of land, the same S. gave to our husband and us to have and to hold, and to the heirs of our husband,<sup>2</sup> so that we [hold] only for term of life etc. of the heritage of E. son and heir of S., and without him etc.; and we pray aid etc.

And the aid was granted without being counterpleaded.

*Herle*. What have you for the form [of the gift]?

*Willoughby*. Ready etc.

*Herle*. To that you cannot be received, for (whereas you say that William de Queneby gave in tailed form to [Robert] de Queneby and [Maud] his wife, from whom you issued), see here the deed of William de Queneby, which witnesses that the gift was in fee simple to [Robert] only; and moreover we tell you that you are heir of [William]. Judgment, whether you can be received to aver the contrary.

*Willoughby*. The law allows us to aver the form; and we do not demand by way of reversion; so we have nothing to do with [William's] deed, for we do not demand through him nor as his heir.

STANTON, J. It may be that after the charter in tail,<sup>3</sup> he made a charter [in fee] simple. And he does not demand as heir of the reversion. So the averment should [be received].

*Herle* submitted.

<sup>1</sup> The reader will do well to begin with our Note from the Record.

<sup>2</sup> This does not seem to be correct.

<sup>3</sup> But there does not seem to have been any such charter.

II.<sup>1</sup>

Un Johan feffa William soun fuiz et Mahaud sa femme de certeinz tenemenz, tenir a eux et lour heirs de lour deux corps engendretz; et puis après fist une chartre symple de mesme les tenemenz tenir a W[illiam] en sa seisine. W[illiam] avoit issue. Et puis aliena W[illiam] les tenemenz a un R., et lui bailla la chartre q'il avoit, qe tesmoigna q'il avoit fee symple. Mortuis predictis personis un T., l'issue W[illiam] et M[ahaud], vient et porta soun bref de fourme de doun en le descendre vers un N. et demaunda mesme les tenemenz.

*Herle.* Quaunt au partie de sa demaunde il dit q'il n'avoit estat sy noun a terme de vie et la reversioun a F. saunz qi etc. Et pria eide etc. (*Habuit.*) Quaunt au remenaunt il dit q'il n'avoit estat sy noun en fee taillé, et pria aide del heir.

*Fr.* Aide ne devietz avoir, qar vous mesmes poietz doner auxint haut r[espouns] come lui qe vous prietz en eide. Et estre ceo eide ne doit estre graunté en ceo cas, qar si celui qe vous prietz en aide vensit en court et se joynsist en r[espouns], il ne serroit mye r[eceu] de court etc. Ideo etc.

*Herle.* Quei avietz de la fourme?

*Fr.* Prest d'averrer.

*Herle.* A ceo n'avendretz mye, qar la ou vous dites qe Johan enfeffa W[illiam] et M[ahaud] en fourme taillé, la vouz dyoms qe W[illiam] fuist feffé en fee symple et obliga lui et ces heirs a la garrauntie, et vous estes soun heir. Jugement si saunz especialté qe tesmoigne la fourme encountre le fait vostre auncestre al averrement devez estre r[eceu].

*Staunt.* Il cleyme estat par my la fourme. Par quei il covient qe vous dites plus qe il est heir soun auncestre, et il covent dire qe aucune chose lui est descendu.

*Herle.* Nous ne pledoms mye a la garrauntie, mès pledoms a cel q'il ne doit estre r[eceu] d'averrer la fourme depuis qe nous mettoms avaunt le fait soun auncestre, qi heir il est, qe tesmoigne les tenemenz estre dounee en fee symple, et ne mie en fee taillé, saunz moustrer fait de la fourme.

*Migg. ad idem.* S'il portast bref d'entré vers moi *ad terminum qui preteriit*, et jeo demaund[asse] ceo q'il eust dil terme, et il tendist d'averrer, et jeo meisse avaunt le fait soun auncestre, qe voilleit fee

<sup>1</sup> Text from B.

II.<sup>1</sup>

One John enfeoffed William his son and Maud his wife of certain tenements, to hold to them and their heirs of their two bodies begotten, and afterwards he made a simple charter of the same tenements to [William] in his seisin. [William] had issue. Then [William] alienated to one R. and delivered to him the deed in fee simple that he had. These persons being dead, one T., issue of William and Maud, came and brought his writ of formedon in the descender against one N. and demanded the same tenements.

*Herle.* As to part of his demand [we] say that [we] have no estate save for term of life, with reversion to F., without whom etc. And [we] pray aid. (It was granted.) As to the residue, [we] have only an estate tail, and pray aid of the heir.

*Friskenev.* Aid you ought not to have, for you yourself can give as high an answer as he could give whom you pray in aid. Besides, aid should not be granted in this case, for if he whom you pray in aid came into Court and joined in the answer, he would not be received by the Court etc. Therefore etc.

*Herle.* What have you for the form?

*Friskenev.* Ready to aver.

*Herle.* To that you cannot get, for whereas you say that John enfeoffed [William] and [Maud] in fee tail, we tell you that [William] was enfeoffed in fee simple, and [he] bound himself and his heir to warranty, and you are his heir. Judgment, whether without specialty witnessing the form you can be received to an averment against your ancestor's deed.

STANTON, J. He claims an estate by the form. So it behoves you to say more than that he is his ancestor's heir: you must say that something has descended to him.

*Herle.* We are not pleading on the warranty, but we plead that he ought not, without producing a deed for the form, to be allowed to aver the form, since we produce the deed of his ancestor, whose heir he is, which witnesses that the tenements are given in fee simple, not fee tail.

*Miggeley* on the same side. If he brought a writ of entry against me *ad terminum qui practeriit*, and I asked what he had to show for the term, and he offered to aver it, and I produced the deed of his ancestor,

<sup>1</sup> This version appears in the Old Edition, p. 90.

simple, n'entendetz<sup>1</sup> vous pas<sup>2</sup> q'encountre le fait al averement deveroit avenir.

*Toud.* La ou tenemenz sount donetz en fourme taillé, et seisine lyveré par my la fourme, tout eit il chartre de puisnee temps de mesme ceux tenemenz, qe tesmoigne fee symple, cele chartre ne defet mie soun primer estat. Et nous voloms averrer la fourme. Jugement etc.

*Stant.* Voilletz l'averement?

*Herle.* Si vous agardetz, nous le receiveroms volontiers.

*Stant.* Vous le graunterez mesme, qar nous ne l'agardoms pas.

*Herle.* Nous averoms chose qe countrevault un jugement, par ceo qe l'enroulement dirra 'fiat inquisicio,' et sic equipollet.

Et furent r[eceu] al averement non obstante facto antecessoris.

### III.<sup>3</sup>

Maude de Cymisbi porta bref de forme de doun et demanda vers Yollence qe fu femme Robert de Cymisbi ii. mies et ij. bovez de terre, et vers W. de Ingwardeby x. s. de rente et la rente de ij. peir des gaunz et une livre de peivre; et dit qe un William de Cymisby dona ceux tenemenz a Robert de Cimisby et Alice sa femme et a les heirs de lour deus corps issantz; de R[obert] et A[lice] descendi etc. par la forme a Johan com a fiz etc.: de J. a ceste Maude com a fille etc. Et le bref fust 'et que post mortem R. et A. et J. filii et heredis predictorum etc. prefate M. filie et heredi predicti J. desc[endere] etc.'

*Hampton.* Vous avez bien entendu coment il ont dist qe W[illiam] dona ceux tenemenz a R[obert] et A[lice] et les heirs etc. Nous dioms que W. de Ingwardeby fu seisi etc. et dona un mies et une bové de terre a Robert et ceste Yollence a terme de lour ij. vies, et qe après lour decès qe les tenemenz remeinissent a Thomas le fiz pusné R[obert] et Y[ollence], et dount mesme ceste Yollence, qe n'ad qe terme de vie, prie aide de T. a qi etc. Et qaunt a l'autre mies et la bové de terre, nous dioms qe le dit W. de Ingwardeby dona au diz R[obert] et Y[ollence] et a les heirs de lour deus corps engendrez; et

<sup>1</sup> *Corr.* entendrietz (?).

<sup>2</sup> *Om.* pas (?).

<sup>3</sup> Text from Y.(f. 109).



which showed fee simple, you would not hold<sup>1</sup> that against the deed he could get to the averment.

*Toudeby.* Where tenements are given in tailed form, and seisin is delivered according to the form, though he should have a charter of later time of these tenements which witnesses fee simple, the charter would not defeat his first estate. And we will aver the form. Judgment etc.

STANTON, J. Will you take the averment?

*Herle.* If you award it, we will take it willingly.

STANTON, J. You must concede it yourselves, for we do not award it.<sup>2</sup>

*Herle.* We shall have what is equivalent to a judgment, for the enrolment will say 'let an inquest be made.' So it is all one.

And they were received to the averment in spite of the ancestor's deed.

### III.

Maud of Cymisbi brought a writ of formedon and demanded against Yollence, the wife of Robert of Cymisbi, two messuages and two bovates of land, and against W. of Ingwardeby ten shillings' rent and the rent of two pairs of gloves and a pound of pepper. And she said that one William of Cymisby gave these tenements to Robert of Cimisby and Alice his wife and to the heirs of their two bodies issuing; from Robert and Alice [the right] descended etc. by the form to John as son etc.; from John to this Maud as daughter etc. And the writ ran: 'and which after the death of R[obert] and A[lice] and J[ohn] son and heir of the said etc. [ought] to descend to the said M[aud] daughter and heir of the said J[ohn].'

*Hampton.* You have heard how they have said that Wiliam gave these tenements to Robert and Alice and the heirs etc. We say that W. of Ingwardeby was seised etc. and gave a messuage and a bovate of land to Robert and this Yollence for the term of their two lives, and that after their decease the tenements should remain to Thomas, younger son of Robert and Yollence; and therefore Yollence, who has only for term of life, prays aid of Thomas etc. to whom etc. And as to the other messuage and the bovate of land, we say that W. of Ingwardeby gave them to Robert and Yollence and to the heirs of their two bodies begotten; and [we] pray aid of Thomas because G.,

<sup>1</sup> The text seems to need a slight correction.

<sup>2</sup> On the one hand Stanton does not desire to decide a point of law, and on

the other Herle, fearing perhaps his client's displeasure, wishes not to make any voluntary concession.

prie aide du dit T[homas] pur ceo qe G. sun frere eygné morust. Et qaunt a la rente, qei avez de la forme ?

*Willuby.* Bon pays.

*Herle.* W. vous dit qe Robert a qi le doun se fist, com vous dites, et desc[endi] a J[ohan] et de J[ohan] a vous com a soer et heir, nous enfeffa de cele rente avoir et tenir a nous et a nos heirs en fee simple. Et si nous fuissoms enpledé par autre, vous nous serriez tenu a la garantie. Jugement si encontre le fet vostre auncestre action poez avoir.

*Hervi a Willuby.* Savez rien dire pur qei ele ne deit eide avoir ?

*Willuby.* Eit etc.

*Hervi.* Et al un et al autre ?

*Willuby.* Sire, oil.

Et de ceo fust il mult blamé, pur ceo qe coment q'il granta eide de touz qe sunt en le remeindre et des tenemenz qe ele tient a terme de vie, qe ele duist aide avoir des tenemenz qe lu fust doné en fee taillé a queu doun ele fu mesme partie.

*Hervi.* Qaunt a la rente tendez vos jugemenz.

Et postea tertio die Yollence fust demandé.

*Herle.* Veez icy Yollence par attorné.

*Willu.* Qei r[espount] Yollence ?

*Herle.* Ele ad r[espondu] et prié aide, et vous avez granté l'eide.

*Willuby.* Qaunt a les tenemenz a terme de vie, et ne mie en les tenemenz en forme taillé.

*Herle.* Nous vouchoms record.

*Hervi.* Prier eide del issue en forme taillé n'est pas suffrable de ley. Par qei dites autre chose.

*Herle.* Si vous agardez.

*Hervi.* Vous savez bien qe aide prier n'est pas suffrable en forme taillé, ne de curt ne de partie.

Et in fine *Herle* dixit : La ou il dient qe les tenemenz furent donez en forme taillé a Robert et Alice, nous dioms qe W. dona ceux tenemenz a Robert sun fiz en fee simple par ceste chartre ; et demandoms jugement, desicom il n'ont rien de la forme autre qe vente, si contre nostre chartre, qe tesmoigne fee simple, action puissent avoir.

*Willuby.* Nous le voloms averer.

his elder brother, is dead. And as to the rent, what have you for the form ?

*Willoughby.* The country.

*Herle.* W. tells you that Robert, to whom the gift was made, as you say, and [from whom it] descended to John and from John to you as sister<sup>1</sup> and heir, enfeoffed us of this rent to have and to hold to us and our heirs in fee simple. And if we were impleaded by another, you would be bound to the warranty. Judgment, whether against the deed of your ancestor you can have action.

STANTON, J., to *Willoughby*. Have you anything to say why she should not have aid ?

*Willoughby.* Let her have it.

STANTON, J. To both ?

*Willoughby.* Yes, sir.

And for this he was much blamed, because he allowed aid of all the tenements,<sup>2</sup> both of those which are in the remainder and which she holds for term of life, and also of those which were given her in tailed fee, to which gift she was a party.

STANTON, J. As to the rent, await your judgments.

The third day after Yollence was called.

*Herle.* Here you see Yollence by attorney.

*Willoughby.* What does Yollence answer ?

*Herle.* She answered and prayed aid, and you have granted it.

*Willoughby.* For the tenements for terms of life, and not for the tenements in tailed form.

*Herle.* We vouch the record.

STANTON, J. In the case of fee tail the law will not suffer that the issue be prayed in aid. So say something else.

*Herle.* If you award it.<sup>3</sup>

STANTON, J. You well know that to pray aid is not allowable in the case of fee tail ; neither the court nor the parties can permit it.

And in the end *Herle* said : Whereas they say that the tenements were given in tailed form to Robert and Alice, we say that W. gave these tenements to Robert his son by this charter in fee simple. And as they have nothing for the form other than wind against our charter, which witnesses fee simple, we demand judgment whether they can have action.

*Willoughby.* We wish to aver it.

<sup>1</sup> It should be 'daughter.'

<sup>2</sup> This is not very clearly put. Our translation presupposes some amendments. The point is that tenant in tail

is not entitled to aid from his issue.

<sup>3</sup> The record shows an aid prayer only of what the tenant in the action held for life.

de la garde de son droit demene, et ne mye etc.; le bref fut agardé bon pur ceo qe statut le doune sanz fere mentioun par quel tittle il est avenuz a la garde.

## II.<sup>1</sup>

En un bref de ravissement fut chalengé qe voleit 'quare talem in custodia sua existentem cuius maritagium ad ipsum pertinet contra voluntatem etc. vi et armis rapuit etc.' Et en countaunt assigna vers la defendaunte<sup>2</sup> pur ceo qe son auncestre tynt de un A. par service de chivaler, et il après sa mort seisi de la garde, la dona a celi q'ore se pleint; qe le bref est doné a celi q'est seisi de la garde de son dreit demene et non etc. Et fut le bref agardé bon pur ceo qe l'estatut le<sup>3</sup> doune sanz fere mencioun par quel tittle il est avenuz. Et pus chalangea le bref pur ceo q'il est doné par statut la ou les paroles de l'estatut ne la purveaunce ne put estre anoyté ne amenusé, et statut ly doune sanz ceste parole 'vi et armis': et demaundoms jugement de bref etc.

### 56. ROBERTSBRIDGE (ABBOT OF) v. ECHINGHAM.<sup>4</sup>

[Advocacio transit sine gleba.]

W. de E. conust les advocaciones contenuz etc. estre le droit l'Abbé de Poncham Robert et le droit de sa eglise Seint N. de<sup>5</sup> com celi etc. et ce lui relessa etc. a avoir et tenir a lui et a ses successeurs et a sa eglise de Seint N. etc. de chiefe seignourage et par les services etc. a touz jours. Et sic transit advocatio sine gleba.

### 57. LATIMER v. LATIMER.<sup>6</sup>

*Quare impedit* ou une persone fuist privé et puis remis en soun primer estat. Vide casum in fine placiti.

Thomas le Latymer porta le *quare impedit* vers Alice qe fut la femme William le Latymer et prist son tittle de<sup>7</sup> lour comune auncestre, qe presenta etc. des[cendaunt] etc.; et puis<sup>8</sup> composicion entre lour auncestres fut ordeiné qe un presentereit une fietz et un

<sup>1</sup> Text from *M*.    <sup>2</sup> Word dubious.    <sup>3</sup> de *M*.    <sup>4</sup> Text from *M*.    <sup>5</sup> Some place-name omitted.    <sup>6</sup> Text from *M*; compared with *P*, *B*. Headnote from *B*.  
<sup>7</sup> title del presentement a *B*.    <sup>8</sup> prions qe *M*; pus *P*; par *B*.



seised of the ward in his own right, and not etc. The writ was awarded good, for the Statute<sup>1</sup> gives it without mentioning by what title he has come to the wardship.

## II.

A writ of ravishment of ward was challenged. It ran : ‘ why with force and arms etc. he ravished against his will such an one being in [the plaintiff’s] wardship, whose marriage belonged to [the plaintiff] by reason of the wardship.’ And in counting [the plaintiff] alleged against the defendant that [the heir’s] ancestor held of one A. by knight’s service, and after his death [A.] was seised of the wardship, and gave it to the plaintiff. And [the cause of challenge was] that the writ is given to one who is seised of the wardship in his own right, and not etc. The writ was adjudged good, for the Statute gives it without making mention of the title by which he has come to [the wardship]. Then the writ was challenged because it is given by Statute and the words and the purview of the Statute cannot be increased or diminished, and the Statute gives [the writ] without the words ‘ by force and arms ’ :<sup>2</sup> we pray judgment of the writ.

### 56. ROBERTSBRIDGE (ABBOT OF) *v.* ECHINGHAM.<sup>3</sup>

Fine of advowsons in gross.

W. de E. confessed the advowsons contained [in the fine] to be the right of a certain Abbot and the right of his church of St N., as that etc. and released the same to him etc. to have and hold to him and his successors and his church of St. N. etc. of the chief lords etc. by the services etc. for ever. And so an advowson passes without glebe.

### 57. LATIMER *v.* LATIMER.<sup>4</sup>

A parson deprived by the bishop is restored by the Pope. *Qu.* the effect that this has on the rights of parceners entitled to present by turns.

Thomas le Latymer brought the *quare impedit* against Alice, wife that was of William le Latymer, and took his title [in a presentation] by their common ancestor, with descent [to them]. And [he said that] a composition was made between their ancestors that they should

<sup>1</sup> Stat. Westm. II. c. 35.

<sup>2</sup> This is true.

<sup>3</sup> Proper names from the record and foot of the fine of which notes are

printed in the Appendix.

<sup>4</sup> This case appears in the Old Edition, p. 85.

altre un altre foiz;<sup>1</sup> pus porta bref<sup>2</sup> mesme cesti Thomas Latymer par r[esoun] de mesme cele composicioun vers mesme cele Alice a recoverer<sup>3</sup> cel presentement et ses damages a la value del eglise de ij. aunz eo quod episcopus etc. a un autre<sup>4</sup> W. de Burnel, par qi resignement etc.; et<sup>5</sup> ceste Alice presenta un son clerc W. de Corby, qe a son presentement etc. par qi mort etc., et issint appent a lui par resoun de tourne.

*Malb.* La ou vous portez cesti bref et dites qe a vous appent etc. (et rehercea l'entente)<sup>6</sup> nous grauntoms bien qe vous rec[overastes] ut predictum est, par quel rec[overer] adonqe aviez vostre retourn;<sup>7</sup> pus quel jugement et quel retourn<sup>8</sup> nous ne present[ames] poynt W. de G. ne nul autre: prest etc. Par qei a nous apent a presenter.

*Herle.*<sup>9</sup> Nous demaund[oms] par r[esoun] de tourn. Par qei si autre presenta,<sup>10</sup> ceo ne nous tournera pas en prejudice. Et voloms averrer qe pus nostre<sup>11</sup> rec[overer], et<sup>12</sup> pus la collacioun<sup>13</sup> de evesqe W. de G.<sup>14</sup> fut persone enpersoné et morust etc.

*Toud.* Vous alleggez qe W. de G.<sup>15</sup> morust persone,<sup>16</sup> quele chose ne vous<sup>17</sup> done nul title, mès tantum pres[entement] et institucioun, qe vous ne alleggez mye. Et del hure qe nous sumes a un qe vous avez vostre retourn<sup>18</sup> par vostre rec[overer] vers nous *ut supra*, pus quele tourn vous ne poiez dire qe nous unques pres[entames], et si vous le diez—'quod non: prest etc.,' ne vous ne poiez assigner en nous paresse ne<sup>19</sup> necgigenz qe autre prist<sup>20</sup> le pres[entement] en defaute de nous, jugement.

*Stant.* Personne ne put il estre forge en iij. maners: par pres[entement] ou par collacioun ou par provisioun.<sup>21</sup> Par pres[entement] mye, quia non per partem present[atus];<sup>22</sup> par collacioun ne mye, pur ceo qe vous assignez nul debat par qei le evesqe etc.; par provisioun<sup>23</sup> ne mye, pur ceo q'il sount lays patrouns. Par qei depus qe vous<sup>24</sup> allegg[ez] q'il<sup>25</sup> fut persone, il vous covent dire par quele de ceux iij. titles il avoit.

*Herle ut prius.* Et assez ay jeo assigné vostre deffaute, qe<sup>26</sup> jeo voille averrer q'il morust persone etc., et vous nul debat vers lui ne

<sup>1</sup> Om. a et . . . foiz M, B. <sup>2</sup> Om. bref M. <sup>3</sup> et recovery P. <sup>4</sup> episcopus contulit per lapsum temporis a un P. <sup>5</sup> Ins. pus P. <sup>6</sup> Om. et rehercea lentente P; ins. et rehercea le counte B. <sup>7</sup> tourn P, B. <sup>8</sup> tourn P, B. <sup>9</sup> Om. nous apent a presenter. Herle M. <sup>10</sup> presente M; pres' par vostre defaute B. <sup>11</sup> vostre B. <sup>12</sup> voloms averer qe puis nostre tourn et P. <sup>13</sup> consolidacioun B. <sup>14</sup> C. P. <sup>15</sup> C. P. <sup>16</sup> Ins. enpersone P. <sup>17</sup> nous M; om. vous P, B. <sup>18</sup> tourn P, B. <sup>19</sup> Om. paresse ne P. <sup>20</sup> enprist P; purprist B. <sup>21</sup> permissioun M; provitioun P; provis' B. <sup>22</sup> quia pars non present' P; quia non per partem presentandi B. <sup>23</sup> permissioun M; provitioun P; provisioun B. <sup>24</sup> Om. qe vous M. <sup>25</sup> il M. <sup>26</sup> et P.

present in alternate turns. Then he brought a writ by reason of this composition against Alice and recovered the presentation and his damages to the amount of the value of the church for two years<sup>1</sup> because the Bishop [had by reason of lapse collated] the church to one W. de [Burewell], by whose resignation<sup>2</sup> [the church became vacant]; and then Alice presented one W. de Corby, her clerk, who at her presentment [was instituted], and by whose death [the church now is vacant]. And thus it belongs to [Thomas] to present by reason of his turn.

*Malberthorpe.* Whereas you bring this writ and say that it belongs to you [to present]—(rehearsing the count)—we admit that you recovered the presentation as aforesaid, and by that recovery you then had your turn; and since that judgment and turn we did not present [Corby] or anyone else: ready etc. So it belongs to us to present.

*Herle.* We demand by reason of our turn. So if another presented [in your turn], that will not prejudice us. And we will aver that since our recovery and the collation by the Bishop, W. de [Corby] was parson imparsonnee and died etc.

*Toudeby.* You allege that W. de [Corby] died parson, but that will not give you a title, for a title could only be given by presentation and institution, which you do not allege. And we pray judgment since we are agreed that you had your turn by your recovery against us as aforesaid, and you cannot say that since that turn we have ever presented<sup>3</sup>—if you do say so, we are ready to aver the contrary—and you cannot assign any sloth or negligence in our person by reason of which another usurped<sup>4</sup> the presentation in our default.

STANTON, J. Parson he could only be in one of three ways: by presentation, collation, or provision.<sup>5</sup> Not by presentation, for not presented by a party. Not by collation, for you have said nothing of a debate by reason of which the Bishop could collate. Not by provision, for they are lay patrons.<sup>6</sup> So if you say that he was parson, you must show by which of these three titles he had [the benefice].

*Herle* as before. I have sufficiently assigned your default, for I will aver that he died parson and you took no proceedings against him.

<sup>1</sup> The statutory measure of damages in such a case. Stat. Westm. II. c. 5.

<sup>2</sup> Apparently a compulsory resignation, the sentence against Corby being reversed.

<sup>3</sup> The grammatical structure of this

speech is somewhat contorted.

<sup>4</sup> Observe the variants.

<sup>5</sup> One book says 'permission.'

<sup>6</sup> And the Pope does not habitually interfere with patronage in lay hands.

mettez ;<sup>1</sup> qe jeo pose q'il fut entré par sa intrusioun demene et vous le soeffrastes<sup>2</sup> cel possessioun continuer sanz mettre debate, cele possessioun vous cherreit en lieu de torn. Et demaundoms jugement.

Casus<sup>3</sup> placiti. Alice qe fut la femme William Latymer presenta William de C. qe a son presentement etc. par resoun de tourne. Pus mesme cesti William de C. fut deprived per Episcopum certa causa. Après qi privacioune<sup>4</sup> Thomas Latymer voleit avoir présenté. A[lice] destorba etc. Par qei<sup>5</sup> T[homas] porta le *quare impedit* issint qe le temps passa, qe le eveque dona a W. de W. etc. Retourna vers A[lice]<sup>6</sup> le present[ement] et<sup>7</sup> ses damages etc. quia Episcopus etc. et issint avoit T[homas] son retourn.<sup>8</sup> Pus W. de C. qe primes fut présenté par A[lice] suwyt a la court de Rome<sup>9</sup> et defit la privacioun et rec[overa] son primer estat et issint morust persone enpersoné, par qi mort la eglise est ore voide. Questio qi presentera<sup>10</sup> ore.<sup>11</sup>

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 393, Bedford.

Alice, wife that was of William le Latymer, was summoned to answer Thomas le Latymer of a plea that she permit him to present a fit parson to the church of Sutton next (*iuxta*) Bicleswade, which is vacant and pertains to her gift etc. And thereupon Thomas, by his attorney, says that Cristiana Ledet was seised of the advowson of the said church as of fee and right in time of peace, in the time of Henry [III.], and in that time presented to the church one Master John of Holteby, her clerk, who at her presentation was admitted and instituted etc.; and from Cristiana the right of presenting descended to one Wischard as son and heir, and from him to one Walter as son and heir, and from him the right of presenting etc. descended to Alice and Cristiana as daughters and heirs<sup>13</sup> etc.; and he says that Alice was afterwards espoused to William le Latymer; and that, the church being vacant, William, Alice and Cristiana in common presented one Richard of Thorpe, their clerk, who at their presentation was admitted etc. in time of peace, in the time of Edward [I.]; and from Cristiana the right of her share etc. descended to Thomas; and he says that afterwards, the church being vacant, William and Alice, by the assent of Thomas and in respect (*nomine*) of the turn belonging to Alice, presented to the church one William of Corby, who at their presentation was admitted and instituted in time of peace, in the time of Edward [I.]; and he says that, the church being vacant by the resignation of William of Corby, Alice, being then sole etc., opposed herself to Thomas's presentation, and that therefore Thomas

<sup>1</sup> meytiez P; meistes B.    <sup>2</sup> suffrytes P; soeffristes B.    <sup>3</sup> A briefer statement, P.    <sup>4</sup> apres present M; apres qi privacioune B.    <sup>5</sup> etc. puis B.    <sup>6</sup> Apres T. recovery vers A. B.    <sup>7</sup> a B.    <sup>8</sup> tourn B.    <sup>9</sup> Roy B; but oy over erasure.    <sup>10</sup> presenta M.    <sup>11</sup> Om. last sentence P.    <sup>12</sup> Sutton, near Biggleswade.    <sup>13</sup> Or perhaps 'heir.'



I put case that he entered merely as intruder, and you suffered him to continue his possession without taking proceedings : that possession would be accounted your turn. We pray judgment.

The facts were these :—Alice, sometime wife of William Latimer, by reason of her turn presented [Corby], who [was instituted] at her presentation. Then he was deprived by the Bishop for a certain cause. After his deprivation, Thomas Latimer desired to present. Alice impeded [him]. So he brought the *quare impedit*; and, on account of lapse, the Bishop gave [the church] to [Burewell]. Thomas recovered the presentation against Alice and his damages etc. because the Bishop [had collated]; and so Thomas had his turn. Then [Corby], who had previously been presented by Alice, sued to the Court of Rome,<sup>1</sup> and defeated the privation and recovered his first estate and so died parson imparsoned. By his death the church now is vacant. Question : Who is to present now ?

Note from the Record (*continued*).

afterwards in the King's Court here by writ of *quare impedit* recovered his presentation to the church ; but as, owing to Alice's opposition (*impedimentum*), the six months' time was elapsed, the Bishop of Lincoln, diocesan of the place etc., conferred the church on one William of Burewell as on (*per*) the turn belonging to Thomas etc. ; at length, however, Thomas in the King's Court recovered his presentation etc. and the damages etc. ; and afterwards, the church being vacant by the resignation of William of Burewelle, Alice, by reason of her turn etc., presented to the church the said William of Corby, who at her presentation was admitted and instituted etc. in time of peace, in the time of the now King ; and by his death the church now is vacant etc., so that it now belongs to Thomas by reason of his turn etc. to present etc. to the church now vacant : damages, a hundred marks. And thereof he produces suit.<sup>2</sup>

And Alice, by her attorney, comes and defends tort and force etc. ; and she says that Thomas cannot at present claim his presentation to the church ; for she says that, whereas he asserts that she presented to the church William of Corby, by whose death it now is vacant, she did not present him to the church ; and this she is ready to aver ; and she prays judgment.

And Thomas says that the averment which Alice offers is no answer to his action in this behalf etc. ; for he says that he recovered his presentation by judgment as aforesaid, so that the collation of the church made by the Bishop to William of Burewelle was to be accounted (*cedebat*) to Thomas in place of his turn ; and afterwards, when the church was vacant by the resignation of William of Burewelle, William of Corby was parson imparsoned

<sup>1</sup> This does not appear on the record, but seems to be the key of the debate.

<sup>2</sup> The words 'Cras. Pur. de dando

iudicium' are here written in the margin of the roll.\*

**Note from the Record** (*continued*).

in the church etc. and held it for a great time ; so that on the present vacation by his death the turn of presenting belongs to Thomas, since Alice, to whom the turn of presenting belonged after the resignation of William of Burewelle, should not have been ignorant of that vacation, so that if by chance she by her negligence permitted someone else to present William of Corby at the preceding vacation, this ought not to prejudice Thomas from now having the turn that belongs to him ; and he prays judgment.

And Alice says that since Thomas cannot say that after the Bishop's collation etc. she ever had her presentation etc., and she did not present William of Corby nor anyone else, and Thomas does not allege any negligence or default in her person preventing her from enjoying her turn in this behalf, she prays judgment etc.

A day is given to hear their judgment on the morrow of the Purification, saving to the parties their reasons to be alleged on the one side and the other etc.

Afterwards at that day came as well Thomas as Alice. And Alice says that Thomas can claim nothing in the presentation etc. to the church ; for she says that aforetime, to wit, on [Jan. 2, 1311] the morrow of the Circumcision in A.R. 4 at Bedford, covenant was made (*convenit*) between Alice, one of the heirs of Cristiana Ledet, and Thomas, the other of the heirs of Cristiana, to wit, that he remitted and granted and altogether for himself and his heirs quitclaimed to Alice and her heirs for ever all right and claim that he had or in any wise (*iure*) might have in the advowson of the church of Sutton next Bickleswade, to which church Thomas and Alice, as parceners of the inheritance of Cristiana, their

58. PASSELEYE *v.* AUDELEYE.<sup>1</sup>

Finis.

Johan Pandel conust le manoir de C. estre le droit Edmund Passeley et ceo lui rendi etc., forspris le homage et les services J. de A., et graunta le homage et les services mesme celui J. a dit Edmund a avoir et tenir le manoir avaunt dite de chefe seigneur etc. Nota qe sil n'eust graunté les services m[esme] per que servicia.

59. PORTESEYE *v.* HAUSTEDE.<sup>2</sup>

Replevine. Auxilium petitur de uxore et concessum.

En un avowerie qe un R. de H., a qi nostre seignour le Roi avoit graunté la garde de la terre et del heir A. de Lyle,<sup>3</sup> le quel A. tynt le

<sup>1</sup> Text from *M*.

<sup>2</sup> Text from *P*: compared with *M*. Headnote from *M*.

<sup>3</sup> del Ille *M*.

Note from the Record (*continued*).

ancestor, claimed to present in alternate turns, so that neither he nor his heirs nor anyone in his name should thenceforth for ever be able to exact or vindicate any right etc. in the advowson of the church, but that Alice and her heirs might for ever lawfully present to the church, when it should be vacant, without any impediment or contradiction by Thomas and his heirs. And for this etc. Alice remitted and quitclaimed for herself and her heirs to Thomas and his heirs all right and claim etc. in the advowson of the church of Westwardone<sup>1</sup> in the county of Northampton, to which church Thomas and Alice, as parceners and heirs of the inheritance of Cristiana, claimed to present in alternate turns, so that neither Alice nor her heirs should thenceforth for ever be able to exact or claim any right or claim in the advowson of the church of Westwardone, but that Thomas and his heirs might for ever lawfully present to the church of Westwardone, when it should be vacant, without any impediment or contradiction by Alice or her heirs. And she proffers a 'part' of a writing indented between them, which witnesses the premises etc.

And Thomas confesses the writing to be his deed.

And therefore it is awarded that Alice recover her presentation to the church of Suttone against Thomas, and her damages to the value of a moiety of the church, as the six months' time has not yet etc. And be Thomas in mercy. And let Alice have a writ to the Bishop of Lincoln that, notwithstanding Thomas's reclamation, he admit a fit parson to the church of Suttone at Alice's presentation. And Alice remits the damages etc.

58. PASSELEYE *v.* AUDELEYE.<sup>2</sup>

Conveyance of a manor by fine.

[James of Audeley] knowledged the manor of C. to be the right of Edmund Passeley and rendered it to him, excepting the homage and services of J. de A., and granted the homage and services of this same J. to Edmund, to have and to hold the said manor of the chief lord. Note that if he had not granted the services, [Edmund could not have sued]<sup>3</sup> the *per quae servitia* [against J.]

59. PORTESEYE *v.* HAUSTEDE.

In an action touching realty, if a husband has aid of his wife, a writ to summon her is necessary.

In an avowry which R. de H., to whom the King had granted the wardship of the lands and heir of [B.] de Lisle, (which [B.] held the

<sup>1</sup> Mod. Chipping Warden six miles N.E. of Banbury.\*

<sup>2</sup> Proper names from the record and

foot of the fine, of which notes are printed in the Appendix.

<sup>3</sup> Conjectural.

manoir de H. de nostre seynour le Roi en chef, fit sur un Richard de P. et Alice sa femme, cum <sup>1</sup> gardeyn fiz et heir A.,<sup>2</sup> le dit Richard pria eyde de sa femme. Et habuit. Richard <sup>3</sup> suyt bref a fere venir la femme.

*Herle a Toud.* Nous entendoms qe dyt serra al baroun saunz bref q'il eyt sa femme ; et ceo avoms veu sovent.

*Stant.* Il n'ad nul <sup>4</sup> homme en Engleterre qe par ley purra cel procès meygtenir, seil. quod dicatur viro etc., en play de terre ou en nule pley qe touche la reauté saunz ceo qe la femme soit somounse.

Et agarda la somounse.

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 425, Hants.

Robert of Haustede <sup>5</sup> was summoned to answer Richard of Porteseye of a plea wherefore he, together with Richard of Byworthe, took Richard's beasts and unlawfully detained them against gage and pledges etc. And thereupon Richard, by his attorney, complains that on [Aug. 19, 1310] Wednesday next after the Assumption of B. Mary in A.R. 4, in the vill of Helleseye,<sup>6</sup> in the place called Suthfelde, Robert, together with etc., took a horse of Richard's and unlawfully detained it against gage etc. until etc. : damages, ten marks. And thereof he produces suit. (Because Robert and Richard of Byworthe took the beasts in Robert's fee for customs and services due to Robert etc., let execution be done, etc.<sup>7</sup>)

And Robert, by his attorney, comes and defends tort and force when etc. ; and he avows the taking etc. : and lawfully, for he says that one Baldwin de l'Isle (*Insula*) was sometime seised of the manor of Helleseye with the appurtenances, and held that manor of King Edward [L.] in chief, and afterwards by licence of the same King demised it to Richard of Porteseye and Agnes his wife, to hold for the life of both (*utriusque*) of them, rendering thence annually to Baldwin and his heirs twelve pounds ; and thereof Baldwin was seised by the hands of Richard and Agnes ; and he says that after Baldwin's death the present King seized the manor into his hand by reason of the minority of John, son and heir of Baldwin etc., and afterwards committed the wardship of the lands and tenements which were Baldwin's to this Robert of Haustede, to have with all things thereto belonging until the lawful age of the said heir ; and the present King also granted to Robert that he should have and hold the wardship together with all knight's fees, advowsons of churches, lands and tenements which Joan, wife that was of Baldwin, holds in dower out of the said lands and tenements in case she should happen to die <sup>8</sup> while Baldwin's heirs were under age, and together also with all other things that might fall to the King by reason

<sup>1</sup> com a M.

<sup>2</sup> E. M.

<sup>3</sup> Recheley M.

<sup>4</sup> ny ad M.

<sup>5</sup> Or Hanstede.

<sup>6</sup> Mod. Hilsea.

<sup>7</sup> For the full form of this clause in the *pone* see Reg. Brev. Orig. f. 84.

<sup>8</sup> The roll gives *accidere* for *decedere*.



manor of H. in chief of the King), made as guardian of [B.'s] heir upon one Richard de P. and Alice his wife, Richard prayed aid of his wife. It was granted, and Richard sued a writ to cause his wife to come.

*Herle to Toudeby.* We think that without any writ the husband should be told to produce his wife. We have often seen that done.

STANTON, J. No one in England could maintain that procedure as lawful, namely, that in a plea of land or any plea which touches the realty, a husband should be told [to produce his wife] without her being summoned.

And he awarded the summons.

#### Note from the Record (*continued*).

of the wardship until the lawful age of the said heirs, by a charter<sup>1</sup> of the present King's, which he produces and which witnesses this; and he says that because thirty pounds of the said twelve pounds were arrear to him for two years before the day of the taking, he took the horse in the said place, which is part of the manor, for six pounds of the arrears of the rent, as guardian, etc.

And Richard says that he cannot bring this matter to judgment in this behalf without the said Agnes his wife. Therefore be she summoned to be here on the octave of the Purification to answer along with etc. *per* H. de S. etc.<sup>2</sup>

Afterwards in three weeks from Easter next following come the parties etc. And likewise Agnes came, by her attorney, by summons etc. And she joins herself to Richard her husband in pleading etc. And Richard and Agnes say that Robert cannot as guardian etc. avow the taking as lawful upon them for the rent; for they say that, whatever Robert may say about Baldwin holding the manor of Helleseye of the King, the tenements which he calls a manor are only a messuage and seven score acres of land, one acre of wood and seven shillingworths of rent, of which Baldwin held forty acres of land and seven shillingworths of rent, with the appurtenances, of King Edward [L.] by homage, fealty, and the service of doing suit to the King's court of his castle of Porcestre from three weeks to three weeks and of finding one man in time of war for the guard of the said castle for twenty days etc. at his, Baldwin's, cost with haketon (*aketona*), helmet and lance etc.; and that the said King afterwards assigned the castle with the

<sup>1</sup> The King by letters patent dated 11 September, 1307 granted to Robert of Haustede the younger the custody of the lands of Baldwin de l'Isle, deceased tenant in chief, to hold during the minority of the son and heir (Calendar of Patent Rolls, 1307-1313, p. 7). He also granted him by letters patent dated

21 Nov. 1307 the custody of the fees advowsons and lands held in dower by Joan the widow of Baldwin, if the same should fall in during the minority (*Ibidem*, p. 18).\*

<sup>2</sup> The writ, that is, was tested by Hervey de Stanton.

Note from the Record (*continued*).

appurtenances to Margaret, then Queen of England, by way of dower etc. together with the services and all other things to that castle belonging; and that on this assignment they attorned themselves to the Queen for the service belonging to the castle; and they say that the residue of the tenements Baldwin held of other lords; and because the Queen now is seised of the castle with the appurtenances and of the services of Richard and Agnes as tenants of the Queen of the said castle<sup>1</sup> in form aforesaid, and the castle is of the Crown of England, and so the Queen has by the assignment the estate of the King, and therefore by reason of the King's prerogative the rent for which Robert avows etc. and the other services belonging to (*contingencia*) the said heir ought in this case to belong and be regardant (*respicere et spectare*) rather to the Queen by reason of the heir's minority than to Robert by virtue of any commission, they [Richard and Agnes] pray judgment whether Robert can avow etc. the distress upon them.

And Robert says that in truth, whereas Richard and Agnes hold the said tenements for the term of their life as aforesaid of Baldwin's heir

60. ANON.<sup>2</sup>

[Avowerie. Eide.]

Un avowere fut fet pur homage arere. Le pleintif dit qe il y avoit tendu le homage et touz jours fut prest etc.

*Ing.* Nous conissons la prise pur un homme et sa femme com leur baillif, et l'avowoms pur nous et nostre femme; et nous avoms<sup>3</sup> la soer einz; et si la court veye qe nous pussoms r[espoundre] sanz ceo qe ele ne soit en court nous prest a resceivre lez.

*Berr.* Il dit q'il vous ad tendu le homage et vous sur ceo avez fet destresce: ergo iniuste.

*Ing.* Il nous tendi pas: prest etc.

Et pur ceo qe a un autre avowerie en mesme le bref fut eide graunté de parcener, demurt tut a mesme le jour.

61. ANON.<sup>4</sup>

[Replevine. Eide. Essone.]

Nota q'en plee de prise des avers si le dest[reignaunt] prie eide de sa femme, et ele ne veigne mye au jour qe douné lui est, nul essone

<sup>1</sup> That is, tenants holding of the Queen as lady of Porchester Castle. <sup>2</sup> Text from *M.* <sup>3</sup> *Corr.* navoms. <sup>4</sup> Text from *B.*

Note from the Record (*continued*).

by the said rent and by doing for Baldwin's heir the services due to the lords of the fee, and if Richard did those services to the said castle, this was done in the name of the heir and not as tenant [holding] of the said castle, so that the said twelve pounds are not rent service (*redditus servicium*) etc. but rather a 'farm' (*firma*) due to Baldwin's heir, and of that farm Richard and Agnes are the tenants of no one else, and for it they ought not to be intendent to anyone else in this behalf, but only to the heir or his guardian, he [Robert] prays judgment etc.

[Adjournments to the quindene of Trinity, octave of Michaelmas in A.R. 5, octave of Hilary, five weeks from Easter, morrow of St. John Baptist.]

Afterwards at that day came the parties by their attorneys. And since Robert cannot deny that the said forty acres of land and seven shilling-worths of rent [part] of the said tenements etc. are holden of the said Queen as of the appurtenances of the said castle as aforesaid, and therefore Robert as to this (*quoad hoc*) unlawfully avows the distress etc., therefore as to this be he in mercy for an unlawful avowry etc., and as to the residue of the tenements charged with the said farm, it is awarded that he have a return of the horse.

60. ANON.<sup>1</sup>

Aid for the defendant in replevin.

An avowry was made for homage arrear. The plaintiff said that he had tendered the homage and was always ready [to do it].

*Ingham*. We make cognisance as bailiff for a man and his wife,<sup>2</sup> and we avow for ourselves and our wife. And we have [not] got the sister here. If the Court holds that we can answer without her being in court, we are ready to receive [the averment].

BEREFORD, C.J. He says that he has tendered the homage to you and that since then you have distrained, so the distress would be tortious.

*Ingham*. He did not tender it to us : ready etc.

And as aid [of the parcener] had been granted on another avowry in the same writ, the whole is adjourned to the same day.

61. ANON.<sup>3</sup>

Replevin. Aid of wife. Essoin.

In a plea of replevin, if the distrainer prays aid of his wife and she comes not at the day given her, no essoin lies for her ; but the

<sup>1</sup> A poor report in one book only.

<sup>2</sup> Our wife's coparcener.

<sup>3</sup> Old Edition, p. 89.

ne gist pur la femme ; mès le dest[reignaunt] serra en la merci et le pleintif avera ses avers quites etc. Et sic *econtra* ou le pleintif prie eide de sa femme, et ne la meigne pas en court au jour qe douné lui est, le dest[reignaunt] avera retourn des avers et il en la merci par *Ber.*<sup>1</sup> Non tenet ubi summonita est set ubi dictum est quod habeat uxorem etc.

62. ANON.<sup>2</sup>

Entré, ou une femme pria d'estre receu a defendre soun droit et ele ne fust pas nommé en le bref. Mès pur ceo qe ele mist avaunt fyn qe ceo tesmoigne, ele fut receu.

En un bref d'entré fuist porté vers un homme etc. Et il fist defaute après apparaunce. Par quei le petit *cape* issit. Au quel jour del *cape* retourné le homme ne vient point. Mès une Alice sa femme vient et pria d'estre receu a deffendre soun droit.

*Migg.* Ele ne doit estre receu, qar ele n'est pas nommé en le bref.

*Herle.* Veietz cy une fine levee devaunt T. justices etc. qe tesmoigne q'ele fuist joyntfeffé ove soun baroun.

*Malm.* Par comune lei ele ne doit estre receu ne statut ne la ayde pas.

Et fuit admissa per *Ber.* qui<sup>3</sup> portat recordum in se. Secus esset si feoffata fuisset per cartam.

*Herle.* Moustrez vostre droit.

*Migg.* Vous estes receu a deffendre etc. deffendetz si vous voilletz.

Et avoit oy du bref.

*Herle.* Vostre ael avoit iij. filles S. J. et J. etc. Vous clamet soul come soul heir. Jugement etc.

*Migg.* C'est al abatement du bref, par quei vous ne poietz ceste excepcioun joyer.

*Ber.* Suffit a lui qaunt a ore en deffense de soun droit, qar ele dit qe vous n'estes pas soul heir, et par taunt vous soul ne poietz ren demaunder.

*Migg.* Nostre ael etc. n'avoit unqes fille come vous etc. Idoygne par noun : prest etc.

Et alii e contra.

<sup>1</sup> Punctuation uncertain.

<sup>2</sup> Text from *B.*

<sup>3</sup> *Corr.* quia finis *Conj.*



distrainor will be in mercy and the plaintiff will have his beasts quit etc. And in the converse case where the plaintiff prays aid of his wife and does not bring her into court at the day given her, the distrainor will have a return of the beasts and [the plaintiff] will be in mercy. Per BEREฟอร์ด, C.J.: This holds good only where a husband is told to produce his wife: not where she is summoned.

## 62. ANON.

The tenant's wife is received, though not named in the writ, as she produces a fine showing joint tenancy with her husband. She pleads the non-joinder of co-heirs.

A writ of entry was brought against a man. He made default after appearance. So the little *cape* issued. At the day when it was returned he came not. But one Alice his wife came and prayed to be received to defend her right.

*Miggeley*. She ought not to be received, for she is not named in the writ.

*Herle*. See here a fine levied before [certain] justices etc., which witnesses that she is jointly enfeoffed with her husband.

*Malberthorpe*. At common law she would not be received, and the Statute<sup>2</sup> does not help her.

She was received by BEREฟอร์ด, C.J., for [a fine] bears record in itself. It would be otherwise were she enfeoffed by charter.

*Herle*. Show your right.

*Miggeley*. You are received to defend, so defend if you wish.

[*Herle*] had a hearing of the writ.

*Herle*. Your grandfather had three daughters (naming them), and you alone are claiming as sole heir. Judgment etc.

*Miggeley*. That goes to abate the writ, therefore you cannot use this plea.

BEREฟอร์ด, C.J. At present it suffices her as a defence of her right, for she says that you are not sole heir, and therefore you alone can demand nothing.

*Miggeley*. Our grandfather never had any daughter, Idonea by name, as you allege: ready etc.

Issue joined.

<sup>1</sup> This case appears in the Old Edition, p. 87. It bears a very close re-

semblance to Case 18 on p. 85 above.\*

<sup>2</sup> Stat. Westm. II, c. 3.

## 68. RICARD v. MUNDRUSHE.

*Cui in vita*, ou le fet la femme fust mise avaunt fet tauncum ele fust sole.

Ou clause de garantie ne barre mie de accion etc.

I.<sup>2</sup>

Un Alisaundre et Jone sa femme porterent lour *cui in vita* vers un Henri etc., et dit q'il n'ad entré sy noun par W. de C. jaditz baroun mesme ceste etc. a qi etc.

*Scrop.* Jugement de bref, qar la ou une femme porte le *cui in vita* del alienacioun fet par soun primer baroun, la duist ele dire 'per W. de C. primum virum suum, cui etc.'

*Scrop, Justice.*<sup>2</sup> Ele est coverte del seconde baroun et est nomé en ceo bref, jugement si le bref ne soit assetz bon. Set aliud esset si ele eust demandé sole et l'un et l'autre baroun mort.

*Scrop.* Ele mesmes nous dona mesme les tenemenz taunt come ele fuist sole, et lia lui et ses heirs a la garrauntie par ceo fait, et si nous fuissoms empledé etc. Jugement si encountre vostre fait puissetz actioun avoir.

*Hedone.* Qe vous n'avietz unques estat par cele chartre: prest etc.; einz estes entré par nostre baroun.

*Scrop.* Vous pletetz a la voidaunce de la chartre. Par quei conissetz primes si ceo soit vostre fait ou noun, qar nous ne pledoms mye a nostre entré, mès a vous barrer actioun et ceo par my la garrauntie. Et pur ceo est ceo vostre fait ou noun?

*Hedone.* Coment qe vous mettet avaunt ceo fait pur nous barrer, nous vous dyoms qe nous fumes toutefoz seisi et en possessione sauntz ceo qe vous nul estat n'avietz par my cele chartre si la qe vous entrastes par nostre baroun: prest etc.

*Scrop.* Depuis q'il ne dedit point soun fait, nous prioms qe la court la tiegne a graunté.

*Hedone ut prius.*

*Scrop.* Depuis q'il ne dedit pas la chartre, en la quele est contenu clause de garrauntie, et nous seisi des tenemenz, jugement si actioun etc.

<sup>1</sup> Text from B. Headnotes from B and Y.

<sup>2</sup> Corr. Hedon (?).

63. RICARD *v.* MUNDRUSHE.<sup>1</sup>

*Cui in vita.* Tenant pleads entry by gift of wife while sole and produces her charter with a clause of warranty. He is driven to accept an averment that he entered not by the charter but by the husband's alienation.

I.<sup>2</sup>

One [Richard] and Joan his wife brought their *cui in vita* against one [Walter]; and [the writ] said 'into which he has no entry unless by Geoffrey, sometime husband of [Joan], whom etc.'

*Scrope.* Judgment of the writ, for when a woman brings a *cui in vita* on an alienation by her first husband, she ought to say 'by [so and so] her first husband, whom etc.'

SCROPE, J.<sup>3</sup> She is covert by a second husband, [who] is named in the writ, judgment whether the writ be not good enough. It would be otherwise if both husbands were dead and she were demanding while sole.<sup>4</sup>

*Scrope.* She herself gave us these tenements while she was sole and bound herself and her heirs to warranty by this deed; and if we were impleaded etc. Judgment, whether you can have action against your deed.

*Hedon.* Ready [to aver] that you never had an estate by this charter, but entered by our husband.

*Scrope.* You plead to the avoidance of the charter. So first confess whether this is your deed or not, for we are pleading not to our entry, but to bar your action by means of the warranty. Therefore is it your deed or not?

*Hedon.* Though you produce this deed to bar us, we tell you that we were always seised and in possession without your having any estate by this charter until you entered by our husband: ready etc.

*Scrope.* As [she] does not deny this deed, we pray that the Court take it for granted.

*Hedon* as before.

*Scrope.* As [she] does not deny the charter, which contains a clause of warranty, and we are seised of the tenements, [we pray] judgment whether [she can have] action.

<sup>1</sup> This case is Fitz. *Cui in vita*, 21.

<sup>2</sup> This version appears in the Old Edition, p. 90.

<sup>3</sup> This should come from the demandant's counsel.

<sup>4</sup> This sentence looks like a reporter's note.

*Ber.* Quidetz vous si issint soit auxint come ele dit qe vostre chartre vous puist valer, depuis q'ele tend d'averer q'ele touz jours fuist seisi et sa seisine continua si la q'ele fuist coverte de baroun (*quasi diceret non*) ?

*Pass.* Yl dit deux choses : q'il est seisi et q'il ad sa chartre qe content garrauntie. Jugement si actioun puissetz avoir.

*Hedone* ut prius.

*Scrop.* Vous avietz conu qe c'est vostre fait. Par quei nous demaundoms jugement si encountre la garrauntie al averement devetz avenir, depuis qe nous en nostre seisine le mettoms avaunt come barre, et vous ne dites autre chose sy noun qe nous n'avioms unques estat par la chartre etc.

*Scrop.* Q'ele nous enfeffa tant come ele fuist sole : prest etc.

*Hedone.* Qe vous n'estes my entré sy noun par nostre baroun : prest etc.

Et irrotulatur q'il entra par la chartre taunt come ele fuist sole et ne mye par le baroun etc.

Et alii econtra.

## II.<sup>1</sup>

Un homme et sa femme porterent le *cui in vita* vers B.

*Scrope.* A cestui bref ne doivent il estre r[espondu], qar il demandent com lour dowere del dowement C. jadis baron etc., et le bref voet 'in quod non habet ingressum nisi per M. quondam virum suum,' ou le bref dust dire 'primum virum suum' vel 'secundum virum suum' etc. Et demandoms jugement de cesti bref.

*Hervy* agarda le bref bon.

*Scrop.* defendi et dist qe la ou ele supposa par sun bref qe nous aviom l'entré par sun baroun, nous dioms qe de sun doun demene tant come ele fust vedue, et obliga etc. lui e ses heirs a la garantie. Et si nous fuissoms enpledez par autre etc. ele nous serroit etc. Jugement si encontre son fet puisse etc.

*Hedon.* Nous voloms averer qe<sup>2</sup> vous aviez l'entré par nostre baron.

*Scrop.* Conissez si ceo est vostre fet ou noun.

*Hedon.* Qi fet qe vous mettez avant, nous dioms qe nostre baron et nous fumes seisi et aliena auxicom nostre bref suppose ; et prest del averer.

*Scrop.* Nostre fet voet ij. choses, scilicet doun e garantie, a quei vous ne r[esponez] nent. Jugement etc. Et d'autrepart vous en

<sup>1</sup> Text from Y (f. 94).

<sup>2</sup> averer s qe Y.



BEREFORD, C.J. Think you that if things are as she says, your charter will avail you when she tenders to aver that she was always seised and continued seised until she was covert? Not so.

*Passelsey.* He says two things: that he is seised and that he has her charter which contains a warranty. Judgment, whether you can have an action.

*Hedon* as before.

*Scrope.* You have confessed that this is your deed. Therefore we pray judgment whether you can get to an averment against the warranty, since we in our seisin proffer it as a bar, and you say nothing save that we never had an estate by the charter etc.

*Scrope.* Ready [to aver] that she enfeoffed us when she was sole.

*Hedon.* Ready etc. that you did not enter unless by our husband.

And the enrolment was 'that he entered by the charter while she was sole and not by the husband etc.'

Issue joined.

## II.

A man and his wife brought the *cui in vita* against B.

*Scrope.* To this writ they ought not to be answered, for they demand as their dower<sup>1</sup> by the endowment of C. sometime her husband etc.; and the writ says 'into which he has no entry unless by M. sometime her husband,' whereas it ought to say 'her first husband' or 'her second husband' etc. We pray judgment of this writ.

STANTON, J., adjudged the writ good.

*Scrope* defended and said that, whereas she supposes by her writ that we had entry by her husband, we say that it was by her own gift while she was a widow, and she bound herself and her heirs to warranty. And if we were impleaded by another, she would be bound [to warrant] us. Judgment, whether against her own deed etc.

*Hedon.* We will aver that you had entry by our husband.

*Scrope.* Confess whether this is your deed or not.

*Hedon.* No matter whose deed you produce, we say that we and our husband were seised, and that he alienated as our writ supposes: ready to aver it.

*Scrope.* Our deed comprises two things: gift and warranty, to which you make no answer. Judgment etc. Besides, by your silence

<sup>1</sup> An error. There is no dower in the case.

teisant avez granté ceo fet estre le vostre, et nous en nostre tenance par mi vostre fet qe voet doun et garrantie. Ne devez estre barré ?

*Ber.* Ne vous dit il q'ele ensemblement ove sun baron furent seisis et le baron aliena auxi com le bref suppose ? Dount n'aviez mi l'entré par la chartre. Et tut eez vous la chartre et nent l'entré, jeo tienke cele chartre pur nulle et issi voide.

*Hedon.* Qe vous aviez l'entré par nostre baroun et nent par la chartre : prest etc.

Et alii contrarium.

**Note from the Record.**

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 45d, Hertf.

Henry Ricard and Joan his wife, by their attorney, demand against Walter Mundrushe a messuage with the appurtenances in Erdeleghe<sup>1</sup> as the right and inheritance of Joan, and [as that] into which Walter has no entry unless by Geoffrey Rycard, sometime husband of Joan, who demised it to him, and whom in his lifetime she could not gainsay.

And Walter, by his attorney, comes and defends their right when etc.; and he says that Henry and Joan can claim nothing in the tenements; for he says that Joan while sole gave them to him, Walter, to hold to him and his heirs and bound herself and her heirs to warrant etc.; and he proffers a charter under the name of Joan, which witnesses this etc., and therefore she would be bound to warrant the tenements to Walter if he were impleaded by another; and he prays judgment whether Joan can have an action etc. (*Note continued on opposite page.*)

64. ANON.

Bref d'entré des tenemenz en W. et C., ou la vile de W. fust en C., ou par cele cause le bref fust chalengé.

**I.<sup>2</sup>**

Un homme porta soun bref d'entré etc. qe voilleit : 'precipe etc. quod reddat etc. in C. et in W.'

*Herle.* Gaunt q'est en W. est en C. Et il suppose par soun bref deux villes, ou ceo n'est qe une ville. Jugement du bref.

*Hedone.* Vous avietz demaundé la veuwe. Par quei vous n'avendrez mye ore a chalengier la fourme, qar la veuwe afferme la fourme.

*Herle.* Nostre chalenge si est a la matire, et noun pas a la fourme. Et en chescun lieu de plai la ou le bref pecche en matire

<sup>1</sup> Yardley near Baldock.

<sup>2</sup> Text and headnote from *B*.

you have admitted the deed to be yours, and we [are] in our tenancy by means of your deed, which speaks of gift and warranty. Ought not you to be barred?

Bereford, C.J. Does not he tell you that she along with her husband was seised, and that the husband alienated as the writ supposes? So you have not entry by the charter. And though you have the charter and not the entry, I hold that charter for null and void.

*Hedon.* Ready etc. that you had entry by our husband and not by the charter.

Issue joined.

**Note from the Record** (*continued*).

And Henry and Joan confess the charter to be Joan's deed etc.; but they say that it ought not to prejudice them etc.; for they say that, no matter what charter Walter proffers, he had no estate in the messuage by that charter, but Joan remained always in seisin thereof until she married Geoffrey her first husband etc., who alienated the messuage to Walter as Henry and Joan by their writ suppose; and this they are ready to aver by the country.

And Walter says that Joan, before she was married to Geoffrey, out of her seisin enfeoffed him of the messuage and put him in seisin thereof etc., so that he had entry into the messuage by the gift and feoffment made by Joan to him while she was sole as the charter witnesses, and not by Geoffrey, sometime her husband, as Henry and Joan say; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded here for the octave of Hilary.

64. ANON.<sup>1</sup>

A plea that two places named in a writ are but one vill comes too late after view demanded.

I.

A man brought a writ of entry which said: 'Command etc. that he render him etc. in C. and in W.'

*Herle.* Whatever is in W. is in C. And he supposes by his writ that there are two vills where there is only one vill. Judgment of the writ.

*Hedon.* You have prayed a view. So you cannot get to challenge the form, for the view affirms the form.

*Herle.* Our challenge goes not to the form but to the substance. And if a writ sins in its substance one may challenge it at any point

<sup>1</sup> Old Edition, p. 92.

doit homme estre r[eceu] a bref abatre : et hoc dicebat Howard tempore suo : qar il suppose par soun bref W. et C. estre deux villes, ou ceo n'est qe une ville ; et ceo ne puist estre trié sy noun par pais, et issint a la matere. Jugement.

*Hedone.* Vostre excepcioun gist avaunt la veuwe demaundé, et ne mye après ; qar la veuwe ne ne fet autre chose mesqe ascerte la partie de sa demaunde et noun pas a savoir si W. et C. sount deux villes.

*Herle.* Si nous duissoms vouchier des tenemenz en W. et en C., et nous meissoms avaunt fait des tenemenz en C., et nous ne eussoms fait des tenemenz en W., nous perdissoms nostre vouchere. Par quei nous demaundoms jugement du bref.

*Stauntone.* Vous dites mal. Estre ceo vous estes venus trop tard pur abatre le bref pur tiel enchesoune.

*Herle.* Si vous agardetz le bref bon, nous dirrons autre chose.

## II.<sup>1</sup>

Nota qe en un bref de dowere ou dame demanda sun dowere en Elemez e en Eymes.

*Denham* demanda jugement de cestui bref ; qar vous dioms qe Elmes e Eymes sunt tut une ville, et il par son bref suppose q'il sunt diverses villes. Jugement.

*Scrop.* Si jeo demandasse tenemenz en diverses villes, et la *rei* verité fust qe ma demande fust en une ville, pur ceo ne abateriez mie mon bref. Et a cestui bref si avez eu la vewe. Jugement si vous poez ore excepcioner a la forme.

*Denham.* 'Et copulat inter diversa.' Elmes et Eymes sunt une mesme ville, com Everwyke et Yourke, qar le un est fraunceis et l'autre est englès.

*Hervy.* Vous avez eu la vewe. Par quei dites autre chose etc.

Et ad hoc concordant omnes iusticiarii. Et postea vocavit ad warantum.

## 65. BELE v. SCALDEFORD.<sup>2</sup>

Ou la partie ne poet avoir l'assise de novele disseisine acontre<sup>3</sup> rescoverir en banke.

Un A. porta l'assise de novele disseisine vers B. qe fu la femme C., et vers le viscounte, de xvj. s. de rente ove les appurtenances en N., et dist qe eux lui avoit<sup>4</sup> disseisi etc.

<sup>1</sup> Text from Y (f. 141).  
[=encontre].

<sup>2</sup> Text from Y (f. 23).

<sup>3</sup> acont' for encont'  
<sup>4</sup> Corr. avoient.



in the pleading. Howard [J.]<sup>1</sup> used to say so in his time. He supposes by his writ that W. and C. are two villis, whereas it is all one vill, and that cannot be tried except by the country, and so it goes to the substance. Judgment.

*Hedon.* Your plea lies before view demanded and not afterwards, for the view serves no purpose but that of certifying the party of the demand and does not serve to show whether W. and C. are two villis.<sup>2</sup>

*Herle.* If we had to vouch for tenements in W. and in C., and we produced a deed touching tenements in C., and we had no deed for tenements in W., we should lose our voucher. So we pray judgment of the writ.

STANTON, J. You say what is wrong. Besides, you have come too late to abate the writ for such a cause.

*Herle.* If you award the writ good, we will say something else.

## II.

In a writ of dower a lady demanded her dower in Elemez and in Eymes.

*Denom* prayed judgment of this writ, for [said he] we tell you that Elmes and Eymes are all one vill, and [she] by her writ supposes them different villis. Judgment.

*Scrope.* If I demanded tenements in divers villis and the real truth was that my demand lay all in one vill, you would not abate my writ for that; and in this writ you have had the view. Judgment, whether you can now except to the form.

*Denom.* ‘*Et couples different things.*’<sup>3</sup> Elmes and Eymes are one vill, like Everwyke and Yourke, for one is French and the other English.

STANTON, J. You have had the view. So say something else.

To this all the justices agreed. And afterwards [the tenant] vouched to warrant.

### 65. BELE v. SCALDEFORD.

Novel disseisin. Plea that the alleged disseisin was the execution of a judgment in an action of dower.

One [Robert] brought the assise of novel disseisin against [Alice], wife that was of [Roger], and against the sheriff, for sixteen shillings rent with the appurtenances in N. and said that they had disseised him.

<sup>1</sup> A justice of the Common Bench whom Scrope succeeded in 2 Edw. II.\*

<sup>2</sup> So the plea does not arise out of

information given by the view.

<sup>3</sup> Perhaps from a Latin grammar.

Le vicounte r[espondi] et dist q'il n'ad rien ne rien ne cleime ne nul tort n'ad fet, altre qe par bref le Roi meist la dame en seisine.

Beatrix dit q'ele porta sun bref de dower vers W. de N. et demanda la terce partie de un mees et une carué de terre del dowement le dist C. Le quel W. voucha a garant J. fiz et heir C. qe fist defaute. Par qei agarda la court qe B. recoverast sa seisine vers Johan s'il eit du franc tenement qe fut al dit C. baroun, et si noun, q'il eit des terres q'il demande vers le tenant. Et pur ceo qe le garant ne oust suffisant a perferre le dower si nous livera il des terres A. Et demandom jugement si encontre rescoverir qe se fist en baunke puisse assise avoir.

Et post *H. Spig[urnel]* ajorna les parties en banke as utaves de Saint Michel.

*Hervy* examina le record, et trova le chalenge veritable et le rescoverir en roulles du banke. Et agarda qe le plaintiff ne preist rien par sun bref. Et dit s'il quida qe errour lui fust fet qu'il suissit bref de record et procès.

Et pus dist le plaintiff qe le viscounte avoit livré plus large seisine a B. qe sun garant ne voleit.

*Hervy.* Suiez bref a faire le viscounte venir a r[espondre].

Et sic fecit etc.

#### Note from the Record.<sup>1</sup>

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 43, Leic.; Assize Rolls, No. 1350, r. 12.

Heretofore before Henry Spigournel<sup>2</sup> and Miles of Rodberwe, justices assigned to take assizes at Leicester, on [July 18, 1310] Saturday before the feast of St. Margaret in A.R. 4, the assize came to find whether Robert, son of Agnes of Scaldeford, Ralph, son of Roger Mariot, and Alice, wife that was of Roger Mariot, unlawfully disseised Robert Bele of Kyrkeby super Wretheke and Maud his wife of their free tenement in Kyrkeby super Wretheke<sup>3</sup> after the first, etc. And thereupon they complained that they were disseised of the third part of two acres.

And Alice then came, and the others came not; but William of Kyrkeby answered for them as bailiff etc., and for them said that they had nothing in the said third part, and had done no tort and no disseisin.

And Alice answered as tenant and said that the assize thereof between them ought not to be made, for lately here, before R. of Hengham and his fellows, she demanded the said third part as her dower on the endowment of the said Roger by a writ of dower against Robert Bele and Maud; and they vouched John, son of Roger Mariot; and he made default in Hilary term, A.R. 2; and therefore it was awarded<sup>4</sup> that Robert and Maud should hold in peace and that Alice should have to the value of the said third part out

<sup>1</sup> This looks like the reported case, although none of the defendants was sheriff of the county. <sup>2</sup> *Spigornel Roll*. <sup>3</sup> Kirby Bellars on the Wreak. <sup>4</sup> The reference to these proceedings is De Banco Rolls, No. 174, r. 296.\*

The sheriff answered and said that he has nothing, claims nothing, and has done no wrong other than that by the King's writ he put the lady in seisin.

[Alice] said that she brought her writ of dower against [Robert] and demanded the third part of a messuage and carucate of land on the endowment of the said [Roger]. [Robert] vouched to warrant John, son and heir of [Roger], who made default. Therefore the Court awarded that [Alice] should recover her seisin against John if he had freehold that belonged to [Roger] her husband, and, if not, that she should have [her dower] of the lands which she demanded against the [then] tenant. And as the warrantor had not sufficient to complete the dower, [the sheriff] delivered to us lands of [Robert]. And we demand judgment whether he can have an assize against a recovery which was made in the Bench.

And afterwards SPIGURNEL, J., adjourned the parties into the Bench to the octave of Michaelmas.

STANTON, J., examined the record and found the challenge well founded and the recovery<sup>1</sup> on the rolls of the Bench. And he awarded that the plaintiff took nothing by his writ, and said that if he thought that an error was made, he should sue a writ for record and process.<sup>2</sup>

And then the plaintiff said that the sheriff had delivered a larger seisin to Beatrice than his warrant authorised.

STANTON, J. Sue a writ to make the sheriff come to answer.

And he did so.

**Note from the Record** (*continued*).

of the land of John, son of Roger, and if there should be any deficiency, then from the land of Robert and Maud; and that John had no land; and that she sought her seisin against Robert and Maud; and that she entered by judgment and not by disseisin.

And Robert Bele and Maud said that on the day when they vouched John he had sufficient lands in this county, and that this they would aver by the assize.

Issue was joined. But the justices were not able to proceed unless they were certified of the day and year of the voucher. So a day was given to the parties here.<sup>3</sup>

Robert Bele and Maud come, and Alice comes by bailiff: and they pray judgment on the allegations. And because it seems to the Court that a writ of novel disseisin does not lie in this case, let Alice go without day, and let Robert and Maud take nothing by their writ but be in mercy for a false claim.

<sup>1</sup> In the action of dower.

<sup>2</sup> That is, a writ of error bringing record and process before a higher court.

<sup>3</sup> On the Assize Roll the record

states that the original writ and the patent (authorising Spigurnel and Rodberwe to take the assize) were to remain with them.\*

66. ANON.<sup>1</sup>

Ou celui en la reversion par fin entra.

Un Johan porta une assise de novele disseisine vers H. e mist en sa plainte e en vewe des jorours un mies ove les appurtenances en Stratforde.

*Mugg.* Assise ne deit estre, qar nous vous dioms qe une Muriele fust seisi de ces tenemenz, qe hors de sa seisine dona ceu mies a un P. e Is[abel] sa femme e as heirs de lour corps etc., e s'il deviassent etc. qe le mees etc. Le quel P. devya sanz heir etc. La diste Is[abel] après sa mort se lessa marier a un Robert. La quele Muriele granta la reversion de ceo mees a cestui H., q'est ore tenant, devant Sire R. de Hengham e ses compaignons justices du banke tiel an etc. (E mist avant fin qe ceo tesmoigna.) Par vertue de quel grant les ditz Is[abel] e R. se attornerent. E pus après la morte la dite Is[abel] cestui H. entra en sa reversion com bien lui lust. (E demanda jugement si encontre la fyn a l'assise deive avenir sanz moustrer title de plus tardif coment franc tenement lui soit acru.)

*Hengham.* Seisi e disseisi etc.

*Hervy.* Il vous mettent fin en barre, q'est la plus solempne chose en la court le Roi. Coment donqe averiez vous l'assise sanz moustrer title de plus tardife coment franc tenement vous soit acru (*quasi diceret nunquam*) ?

E au drein fust chacé a fere title.

*Hengham.* Un W. fust seisi de ceo mies, qe hors de sa seisine nous enfeffa; par quel feffement nous fumes seisiz vj. anz, tanke nous disseisi; et prest del averer par l'assise.

Ideo veniat assisa.

67. TAYLLOR v. BLOWE.<sup>2</sup>

Ou respondu fust qe cele de qi il prist sun title rien ne oust mès come femme W. etc.

Un A. porta sun bref de cosinage vers B. e dist qe un Richard morust seisi etc.; de Richard resortist a Agnes com a aunte e heir, soer Alice mere Richard; de Agnes a Johan com a fiz; de J. a A. com a fiz e heir, qe ore demande.

*Willuby* defendit etc. Nous dioms qe un Willam purchasa ceux

<sup>1</sup> Text from Y (f. 36).

<sup>2</sup> Text from Y (f. 58).



## 66. ANON.

Novel disseisin. A plea of entry under a fine drives the plaintiff to show later title.

One John brought a writ of novel disseisin against H. and put in his plaint and in view of the jurors a messuage with the appurtenances in Stratford.

*Miggeley.* There ought not to be an assize, for we tell you that one Muriel was seised of these tenements, and she gave this messuage out of her seisin to P. and Isabel his wife and to the heirs of their bodies etc., and if they died without [such an heir] the messuage [should revert]. P. died without heir. After his death Isabel married one Robert. Muriel granted the reversion of the messuage to this H. who is now tenant, before Sir R. Hengham and his fellows, justices of the Bench, in such a year. (And he produced a fine which witnessed this.) By virtue of this grant Isabel and Robert attorned. And then after Isabel's death H. entered into his reversion, as well he might. And we demand judgment whether he ought to get to the assize against the fine without showing later title whereby freehold accrued to him.

*Ingham.* Seised and disseised etc.

STANTON, J. In bar they produce a fine, which is the most solemn thing in the King's Court. How then could you have the assize without showing a later title whereby freehold accrued to you? That cannot be.

And at last he was forced to show title.

*Ingham.* One W. was seised of this messuage, and out of his seisin he enfeoffed us; by that feoffment we were seised six years until he disseised us; and we are ready to aver it by the assize.

Therefore let the assize come.

67. TAYLLOR *v.* BLOWE.

Cosinage. An attempt to use a stranger's charter as a bar fails.

One A. brought his writ of cosinage against B. and said that one Richard died seised; and from Richard [the fee] resorted to Agnes as aunt and heir, sister of Alice, mother of Richard; from Agnes to John as son and heir; from John to the demandant as son and heir.

*Willoughby* defended etc. We say that one William purchased these

tenemenz a lui e a ces heirs de un R. par ceste chartre qe cy est, issi qe cele Alice rien ne eust en les tenemenz mès com femme William. E demandoms jugement, desicom cele demande serroit plus tost eschete q'il ne devendrait en le sanke la femme, si accion poussez avoir.

*Grantebrigge.* Nous voloms averer qe Alice morust seisi etc.

*Wilby.* A ceo ne avendrez mie encontre la chartre qe nous mettoms a la court sanz mostrer especiauté.

*Hervy.* Vous dites qe A. morust etc. Coment avient Alice a les tenemenz ?

*Grantebrigge.* Nous dioms qe un Richard dona ceux tenemenz a W. e Alice e a lour heirs jointement, issi qe Alice survesqui W., e le fee demorra enterement en la persone Alice e de<sup>1</sup> tiel estat morust seisi, e prest del averer.

*Willuby.* Quei r[esponez] vous a la chartre ?

*Hervy.* Il sunt estranges a la chartre.

*Wilby.* Qe Richard enfeffa W. e ses heirs, sanz ceo qe Alice rien ne oust en ses tenemenz mès com femme W., e prest del averer.

Et alii contrarium.

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 340, Dorset.

William, the son of Walter le Tayllur of Caneford, demands against Hugh Blowe one messuage and one and a half acres of land with the appurtenances in Wymburn Mynstre, of which Richard le Deghere, cousin of William, whose heir he is, was seised in his demesne as of fee on the day of his death etc. And thereupon William says that Richard, his cousin etc., was seised of the tenements in his demesne as of fee in time of peace in the time of Edw. [I.], taking the esplees thereof to the value etc. and thereof died seised etc. And from Richard because he died without an heir of his body resorted the fee etc. to one Agnes, the sister of one Maud, Richard's mother etc., as aunt and heir etc. And from Agnes descended the fee etc. to one Walter as son and heir. And from Walter descended the fee etc. to William, the demandant, as son and heir etc. And thereof he produces suit etc.

And Hugh by William of Dorsete, his attorney, comes and says that whereas William demands the tenements of the seisin of Richard, the cousin etc., making his resort from Richard, because he died without an heir of his

#### 68. ANON.<sup>2</sup>

Ou le tenant après garant vouché, e le voucher<sup>3</sup> contrepledé, e pus fust receu al abatement du bref. E ceo fust pur ceo qe le voucher ne fust nent accepté de court ne de partie.

Un Johan porta sun bref de ael vers W. Le quel W. vient e voucha

<sup>1</sup> Om. de Y.    <sup>2</sup> Text from Y (f. 58).    <sup>3</sup> vouche Y.

tenements to him and his heirs from one R. by this charter, which is here, so that Alice had nothing in the tenements except as William's wife. We pray judgment whether you can have action, since [the land] demanded would sooner escheat than come into the wife's blood.

*Cambridge.* We will aver that Alice died seised etc.

*Willoughby.* You cannot get to that against the charter which we produce to the Court, unless you show specialty.

STANTON, J. You say that Alice died seised. How came she to the tenements?

*Cambridge.* We say that one Richard gave these tenements to W. and Alice and their heirs jointly, and that Alice outlived W., and the fee remained entirely in her person, and of that estate she died seised,<sup>1</sup> and this we are ready to aver.

*Willoughby.* What say you to the charter?

STANTON, J. They are strangers to the charter.

*Willoughby.* Ready to aver that Richard enfeoffed W. and his heirs, and that Alice had nothing in the tenements except as his wife.

Issue joined.

#### Note from the Record (*continued*).

body etc., to Agnes, sister of Maud, Richard's mother etc., the same William can claim nothing in those tenements through the blood of Maud, Richard's mother etc., because, he says, the tenements were recently in the seisin of one Walter of Almere, who of those tenements enfeoffed one William the dyer (*tinctorem*) of Wymburn Mynstre, the father of Richard, whose heir he was etc., to hold to him and his heirs for ever. And he proffers a charter under the name of Walter which witnesses this etc. And thereupon he prays judgment etc.

And William says that whatever charter Hugh may proffer here under Walter's name made to William, the father of Richard etc., Walter enfeoffed William, Richard's father, and Maud, William's wife, of the tenements to hold to William and Maud and their heirs for ever. This Maud survived William and died seised of the tenements in her demesne as of fee etc. Richard succeeded in them etc. as her son and heir, and died seised thereof. And he seeks that this may be enquired by the country. Issue is joined and a *venire facias* is awarded at York three weeks after Easter.

#### 68. ANON.

Voucher to warranty; the voucher is counterpleaded. The demandant is suffered to waive the voucher and plead in abatement of the writ.

One John brought his writ of ael against W., who came and

<sup>1</sup> It is difficult to square this with the demandant's original story.

a garant G. de C. e Alice sa femme qe est dedeinz age, e H. de B. e Isabel sa femme qe est dedeinz age.

*Heng.* Nous emparlerom. (E dist :) Vous avez bien entendu ceo voucher, e demandoms jugement de ceo voucher, desicom il ad vouché femme dedeinz age sanz faire mencion q'il sont heirs a ascun auncestre ; e issi hors de forme de chescon voucher etc.

*Denham.* Volez autre chose dire ou tenuz la ?

*Heng.* Jeo plede a la forme de vostre voucher.

*Hervy.* Il vous covient mettre vostre voucher plus en certain, qar vous vouches femmes dedeinz age, e ceo ne poez faire sanz chartre en poinge qe est fet a <sup>1</sup> ascon auncestre.

*Hedon.* Il dirreit bien si ceo fust en cas de dowere.

*Denham.* W. voucha a garant G. de C. e Alice sa feme e H. de B. e Isabel sa femme, filles e heir Johan de Lancastre, qe sunt dedeinz age par ceste chartre qe cy est. (E mist avant chartre qe dist qe Johan de Lancastre avoit doné ceux tenemenz a Rogier pere W. e ses heirs, e obliga lui e ses heirs a la garantie.)

*Hengham.* Nous enparleroms. (E puis dit qe) Rogier pere W. fust le primer qe s'enbatist en les tenemenz après la mort nostre auncestre, e prest del averer, e jugement de ceo voucher etc.

*Denham.* Nent seisi puis le temps limité : prest etc.

Et alii contrarium.

#### 69. THOREWAY v. NEEL.<sup>2</sup>

Ou purchaceresse avoit sun age.

Nota qe en un bref d'entré ou Alice pria sun age.

*Willuby.* Vostre age ne devez avoir, qar G. vostre pere vous feffa de mesmes les tenemenz issi q'il ne devia mie seisi.

*Denh.* Nous sumes fille et heir mesme celui G., a qi vous ne poez altre heir doner ; e issi, tut fust ceo purchaz, ore est trové en herit[age] <sup>3</sup> par la mort Johan sun frere.

*Bereford a Wilby.* Savez moustrer autre heir qe ceste ?

Et non potuit. Ideo expectatur etas etc.

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 333, Lincoln.

Agnes, who was the wife of Robert Thoreway, by Geoffrey of Rouceby, her attorney, demands against Alice, the daughter of Walter Neel of Northrouceby, nine acres of land with appurtenances in Northrouceby <sup>4</sup> as her

<sup>1</sup> *Corr.* de (?). <sup>2</sup> Text from Y (f. 94). <sup>3</sup> Or trové enherité. <sup>4</sup> Apparently modern Rauceby, near Sleaford.\*



vouched to warrant G. de C. and Alice his wife, who is within age, and H. de B. and Isabel his wife, who is within age.

*Ingham.* We will imparl. [After imparlance]: You have heard this voucher, and we pray judgment thereof, for he has vouched women who are under age without mentioning that they are the heirs of any ancestor; and so the voucher is altogether out of form.

*Denom.* Have you anything else to say or will you stop there?

*Ingham.* I plead to the form of your voucher.

STANTON, J. You must make your voucher more precise, for you vouch women who are within age, and that you cannot do unless you have in your hand a charter which is the deed [of] some ancestor.

*Hedon.* What he says would be true if this were a case of dower.

*Denom.* W. vouched G. de C. and Alice his wife and H. de B. and Isabel his wife, daughters and heir of John of Lancaster, who are within age, by this charter, which is here. (He produced a charter which said that John of Lancaster gave the tenements to Roger, father of W., and his heirs, and bound himself and his heirs to warranty.)

*Ingham.* We will imparl. [After imparlance]: Roger father of W. was the first to abate into the tenements after the death of our ancestor<sup>1</sup>: ready to aver it. Judgment of this voucher etc.

*Denom.* [The demandant's ancestor] was not seised since the time of limitation etc.

Issue joined.

#### 69. THOREWAY *v.* NEEL.

A feoffee who has become the feoffor's heir is deemed to be in by inheritance.

In a writ of entry Alice prayed her age.

*Willoughby.* You ought not to have your age, for G., your father, enfeoffed you with these same tenements, so that he did not die seised.

*Denom.* We are daughter and heir of this same G., to whom you can give no other heir; and so, though it was a purchase, she is now found inherited by the death of John her brother.

BEREFORD, C.J., to *Willoughby*. Can you show other heir than her? And he could not. Therefore full age must be awaited.

#### Note from the Record (*continued*).

right etc.; and in which Alice has no entry unless after the demise which Robert, sometime husband of the same Agnes, whom she in his lifetime could not gainsay, made to Walter Neel the elder etc. (*Continued on next page.*)

<sup>1</sup> Stat. Westm. I. c. 40.

Note from the Record (*continued*).

And Alice comes and says that she is within age; and she says that she entered in the aforesaid land after the death of one Walter, her brother, as Walter's sister and heir. And thereupon she says that she knows not how to plead, nor to answer to this writ before her age etc. And she

70. ANON.<sup>1</sup>

[Age.]

Nota ou un homme porta sun bref de entré vers parceners qe furent deinz age.

*Lauf.* Nostre auntecestre devya seisi de ces tenemenz e prioms nostre age.

*Denham.* Nous dioms qe vostre auncestre vous feffa de ceux tenemenz, e prest del averer. Jugement si de vostre purchaz ne devez r[espondre].

Lenqueste dit qe lour auncestre devia seisi, après qi mort il entrerent com filles e heir.

*Hervi.* Si agarde le court q'il eient lour age etc.

71. CAWOOD *v.* YORK (ARCHBISHOP OF).<sup>2</sup>

[Entré sur la novele disseisine.]

Nota qe en le plee David de Cawode e W. Ercevesqe de Everwyke de la 3<sup>e</sup> partie de vj<sup>c</sup> acres de bois l'Ercevesqe dit q'il n'out rien en Cawode mès com tenant, e tiele demande suppose seignurye, la ou bois e wast si sunt demandez de seignur e nent de tenant.

*Bereforde.* Homme peut bien par lei de terre demander la terce partie de un mies e la terce partie de xx. acres de terre; e pur quoi ne puet il demander la terce partie del boys etc.?

*Herle.* La vewe si ad abatu son bref; qar il nous ad fet la vewe en chescune parte del bois etc., en supposant q'il tient en commune, e tenant ne puet tiele accion user vers sun seignur.

*Laufare.* Nous portoms cestui bref d'entré, e dioms qe vous n'avez entré si noun pus la disseisine qe J. Romeyn jadis Ercevesqe etc. nous fist; a quoi vous ne r[esponez] nent. Jugement de vous com de noun defendu.

<sup>1</sup> Text from Y (f. 95).<sup>2</sup> Text from Y (f. 94).

**Note from the Record** (*continued*).

prays that the cause may stand over until her age etc. And because Alice was seen in court to be within age, and because Agnes cannot deny that Alice holds the land by hereditary descent from Walter her brother as is aforesaid, therefore let the cause stand over till her age etc.

## 70. ANON.

Demurrer of the parol. Purchase and descent.

A man brought his writ of entry against parceners who were within age.

*Lauffer.* Our ancestor died seised of these tenements, and we pray our age.

*Denom.* We say that your ancestor enfeoffed you of these tenements and are ready to aver it. Judgment, whether you ought not to answer for your purchase.

The inquest said that their ancestor died seised, and after his death they entered as daughters and heir.

STANTON, J. Therefore the Court awards that they have their age etc.

71. CAWOOD *v.* YORK (ARCHBISHOP OF).

It is not law that a tenant cannot demand woodland against his lord.

In the plea of David of Cawood and W[illiam] Archbishop of York for the third part of six hundred acres of wood, the Archbishop said that [David] had nothing in Cawood except as tenant, and such a demand implies lordship, for wood and waste are demanded by lord and not by tenant.

BEREFORD, C.J. By the law of the land a man may well demand the third part of a messuage and the third part of twenty acres of land; why may he not demand the third part of the wood etc.?

*Herle.* The view has abated his writ, for he has made the view in all parts of the wood etc., implying that he holds in common; and against his lord a tenant cannot use such an action.

*Lauffer.* We bring this writ of entry and say that you have no entry except by the disseisin which J. Romeyn, formerly Archbishop<sup>1</sup> etc. did us; to this you do not answer. Judgment of you as undefended.

<sup>1</sup> John le Romain, Abp. 1286-96.

*Beref. a Touth.* Veez ceo q'il vous dient.

*Touth.* defendi e dist qe J. Romeyn n'entra mie par disseisine einz trova sa eglise seisi enterement de ceo bois : prest etc.

Et alii contrarium.

**Note from the Record.**

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 180, York.<sup>1</sup>

David of Cawod, by his attorney, demands against William, Archbishop of York, the third part of six hundred acres of wood with the appurtenances in Cawod,<sup>2</sup> into which the Archbishop has no entry unless after the disseisin which John le Romeyn, sometime Archbishop of York, wrongfully and without judgment did thereof to the said David after the first voyage etc. And thereupon he says that he himself was seised of the said third part with the appurtenances in his demesne as of fee and of right in time of peace, in the time of Edward [I.], by taking thence esplees to the value etc., and into which etc., unless after the disseisin etc.; and thereof he produces suit etc.

And the Archbishop, by his attorney, comes and defends his right when etc.; and he says that David can claim no right in the said third part etc.; for he says that the manor of Schireburne, whereof Cawood is a member etc., was sometime in the seisin of the Kings of England, progenitors of the now King etc., so that afterwards a certain King of England, progenitor etc., gave to an ancestor of David a messuage and seven bovates of land in Cawod, which tenements David now holds, the lordship of the said

**72. ANON.<sup>3</sup>**

Ou chartre sanz livré de seisine rien ne valut etc.

Nota la qe un bref d'entré fust porté vers B.

*Lauf.* B. ne tient rien de vostre demande ne tynt le jour del bref purchasé, e prest del averer.

Et alii contrarium.

L'Enqueste dit qe B. avoit fet une chartre de ceux tenemenz a un J. sun frere e ses heirs, mès demorra touz jours mesme en seisine sanz remuement faire.

*Hervy.* Ceo puet bien ester ensemble qe B. feffa J. e qe J. regranta les tenemenz pur prendre les profitz. Mès dites<sup>4</sup> nous si B. après la confection de la chartre livera a J. la seisine ou ne mie.

*L'Enqueste.* Nous dioms qe noun.

*Hervi.* Si ararde la court qe A. rescovere sa seisine etc.

<sup>1</sup> Some earlier litigation between the parties may be noted. In Easter term 29 Edw. I. the Archbishop of York brought an action against David of Cawode to recover twenty-one acres and three roods of land in Cawode (De Banco Rolls, No. 138, r. 2).<sup>\*</sup> <sup>2</sup> Cawood is on the Ouse near Selby. <sup>3</sup> Text from Y (f. 95d). <sup>4</sup> dite Y.



BEREFORD, C.J., to *Toudeby*. See what they tell you.

*Toudeby* defended and said that J. Romeyn did not enter by disseisin, but found his church seised of the whole of this wood: ready etc.

Issue joined.

**Note from the Record** (*continued*).

manor of Shireburne, as in woods, liberties, and all other things belonging to the manor by reason of lordship, being always retained for the King, without this (*absque hoc*) that the ancestors of David ever had or could claim anything in the said wood of Cawod, which is a member etc. as is aforesaid; and he says that King John, great-grandfather of the now King, afterwards gave the manor of Shireburne, with its appurtenances, to a certain Archbishop of York, predecessor of the now Archbishop, and his church, to hold in the same estate (*statu*), with all liberties and profits by way of lordship as well in demesne as in services, as the said King John held that manor etc.; and he says that one William Wyckewan, sometime Archbishop of York, predecessor etc. was seised of the manor of Shireburne and of the wood in its entirety as [one] of the appurtenances of the manor, for the whole of his time, without this (*absque hoc*) that any separation of the wood was made in such wise that the ancestors of David had anything in the wood etc.; wherefore he says that John le Romeyn, predecessor etc., at the time when he was created Archbishop etc., found his church seised of the wood in its entirety and held the wood in form aforesaid, without doing any disseisin to David of the said third part, as David says; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the morrow of the Purification.

72. ANON.

No feoffment without livery.

A writ of entry was brought against B.

*Laufer*. B. holds no part of your demand, nor held on the day of writ purchased.

Issue joined.

The inquest said that B. had made a charter of these tenements to his brother J. and his heirs, but remained always in seisin without making any change.

STANTON, J. It is possible that B. enfeoffed J. and that J. regranted the tenements [that B.] might take the profits. But tell us whether after the making of the charter B. delivered seisin to J. or not.

*The Inquest*. We say that hé did not.

STANTON, J. So the Court awards that A. recover his seisin etc.

73. BALUN *v.* MORTIMER.<sup>1</sup>

Ou en la quiteclamance fust contenu 'dedi et concessi' et satis valuit.

Johan Barowe porta sun bref d'entré ad terminum qui preteriit vers Margerie qe fu femme Edmund de Mortimer de ij. parties del manoir del Grant Markeley, forspris une carué de terre e xx. s. de rente. E dist qe un Wautier fu seisi etc. e lessa ceu manier, forspris etc., a Edmund de Mortimer e a ceste M[argerie] a terme qe passé est. De Wautier, pur ceo q'il morust sanz heir, descendit a R. com a frere e heir; de R. a Johan qe ore demande com a fiz e heir.

*Malm.* defendit e dist qe Wautier de qi seisine vous avez conté releassa e quiteclama a Edmund jadis nostre baroun e a nous. E demandoms jugement si encontre le fet vostre auncestre puissez action avoir. (E mist avant fet a la court qe ceo tesmoigna. E le fet fust tiel: 'Noveritis me Walterum Barowe dedisse concessisse relaxasse et pro me et heredibus meis imperpetuum quietumclamasse Edmundo de Mortimer et Margerie uxori eius etc.' E fust son seal appendant e trestouz les seals de touz les tesmoignes.)

Et pus dit Johan nent le fet sun auncestre: prest etc. Et alii contrarium. Et pur ceo qe les tesmoignes furent demorantz en le conté de Wyncestre, dist fust a la partie q'il suysit bref a viconte de Wyncestre de faire venir les tesmoignes ensemblement ove altres francs e ley[aux] etc.

## Notes from the Record.

## I.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 304d, Hereford.

John, the son of Reynold de Balun, demands against Margaret, the widow of Edmund de Mortimer, two parts of the manor of Magna Markeleye,<sup>2</sup> with the appurtenances (except a mill, two carucates of land, fifteen acres of meadow, sixty acres of wood, and ten pounds of rent in the same two parts of the manor) as his right and inheritance etc.; and into which Margaret has no entry unless after the demise which Walter de Balun, the uncle of John, whose heir he is, made thereof to Edmund de Mortimer for a term which is past and which after that term ought to revert to John. And thereupon John says that Walter de Balun, his uncle etc., was seised of the two parts of the manor (except etc.) as of fee and of right in time of peace in the time of Edw. [I.], taking the esplees thereof to the value etc. And from Walter because he died without an heir of his body (*de se*) the right etc. descended to one Reynold, as brother and heir etc., and from Reynold

<sup>1</sup> Text from Y (f. 95).

<sup>2</sup> Much Marcle, between Ross and Ledbury.

73. BALUN *v.* MORTIMER.

A deed of release may contain the words 'give and grant.'

John [Balun] brought his writ of entry *ad terminum qui praeteriit* against Margery, wife that was of Edmund de Mortimer, for two parts of the manor of Much Marcle, except a carucate of land and twenty shillingworths of rent. And he said that one Walter was seised etc., and demised the manor, except etc., to Edmund de Mortimer and this Margery for a term that is past. From Walter, since he died without an heir [of his body], it descended to R. as brother and heir, and from R. to the demandant as son and heir.

Malberthorpe defended and said that Walter, of whose seisin you have counted, released and quitclaimed to Edmund, sometime our husband, and us. Judgment, whether you can have action against the deed of your ancestor. (And he produced to the Court a deed which witnessed this. And it ran thus: 'Know ye that I, Walter [Balun], have given, granted, released, and for me and my heirs for ever quitclaimed to Edmund de Mortimer and Margery his wife etc.' And his seal was appendant, and all the seals of all the witnesses.)

Then said John that it was not his ancestor's deed: ready etc. Issue was joined. And because the witnesses dwelt in the county of [Worcester], the party [defendant] was told to sue a writ to the sheriff of [Worcester] to cause the witnesses to come, together with other free and lawful men.

Notes from the Record (*continued*).

descended the right to John, the demandant, as son and heir etc., and into which etc. And thereof he produces suit etc.

And Margaret by Roger de la Lee, her attorney, comes and defends [John's] right when etc. And they (*sic*) say that John Balun can claim no right in the two parts of the manor (except etc.) of the seisin of Walter, the uncle etc., because she says that when the two parts were in the seisin of Edmund de Mortimer, Margaret's late husband, and also in the seisin of Margaret, Walter, the uncle etc., by his writing gave, granted, and remised and for himself and his heirs for ever quitclaimed to Edmund and Margaret, and their heirs and assigns, whosoever they be, all his right and claim which he ever had or in any way could have in the manor, with all and singular its appurtenances, together with the advowson of the church of the vill etc. as freely, quietly, and entirely as ever Walter at any time had and held it, as more fully appears in the writings of the feoffment heretofore made thereof by Walter to Edmund; and for this gift, grant, remise, and quitclaim Edmund gave to Walter for the term of Walter's life all his manor

Notes from the Record (*continued*).

of Arleye<sup>1</sup> beyond the Severn, with the appurtenances, saving nevertheless to Edmund and his heirs the water of the Severn with the gorges (*gurgitibus*) in the same and all the services of his men on this side of the Severn towards his wood of Wyre and all other appurtenances whatsoever, and escheats, demesnes, rents, meadows, and woods in whatever manner adjacent. And he proffers here the writing under Walter's name, which witnesses this; and it is dated at Beulu<sup>2</sup> in the county of Worcester on [19th February, 1287] Ash Wednesday 15 Edw. [I.]; and thereupon he prays judgment.

And John says that he ought not by the writing to be precluded in this behalf etc. from proceeding, because he says the writing is not the deed of Walter, his uncle etc.; and this he is ready to aver by the country and by the witnesses named in the writing etc. Therefore a *venire facias* addressed to the sheriff of Worcester is awarded for the jurors and the six witnesses named in the writing at York three weeks from Easter.

And be it known that the writing remains in the custody of J. Bacun, the clerk etc. (*Continued on opposite page.*)

74. ANON.<sup>3</sup>

[Ou l'enqueste ne poent nent acorder.]

Nota en un bréf d'entré sur disseisine ou la enqueste se joynt. E après l'enqueste jurré il ne poent nent acorder.

*Hervy.* Bones gentz, vous ne poetz nent acorder.

*Hervy* a Johan Aleyn. Alez si les mettez en une meson tanqe lundy, e q'il n'eient manger ne beire.

Par quel comandement Johan lour mist en une meson sanz etc. Et au drein mesme le jour en la vespre il se acordeint. E pus Johan ala a *Sire Hervi* e lui dit qe il furent acordez. E pus *Hervy* lour dona congé a manger. E pus le lundy l'enqueste vient, et voleient aver dist le verdit en gros. Et *Hervi* dist q'il voleit avoir le counte coment ceo fust. E l'enqueste conta le counte etc.

75. ABRAHAM v. ABRAHAM.<sup>4</sup>

Ou dist fust qe le baroun ne puet fere lees a sa femme.

Johan Abraham porta un bref *ad terminum qui preteriit* vers Alice qe fu femme Robert Abraham, e dist q'ele n'oust entré si noun

<sup>1</sup> Upper Arley, formerly in Staffordshire, now in Worcestershire. <sup>2</sup> Bewdley.

<sup>3</sup> Text from Y (f. 95d): ascribed to Mich. A.R. 3; but among cases of Mich. A.R. 4.

<sup>4</sup> Text from Y (f. 95d).



Notes from the Record (*continued*).

Afterwards on the quindene of Hilary, 15 Edw. II., Margaret came here by her attorney and offered herself on the fourth day against John of the aforesaid plea. And John came not, nor sued as appears in the same Hilary term on roll 172. Therefore the writing is delivered to Hugh de la Hull, Margaret's attorney, here in court by Adam of Herwynton<sup>1</sup> the King's clerk.

## II.

De Banco Rolls, Trinity, 11 Edw. II. (No. 242), r. 172d.

Margaret, the widow of Edmund de Mortimer, by Hugh of Hull, her attorney, offered herself on the fourth day against John, the son of Reynold de Balun, of a plea that she should render to John two parts of the manor of Magna Markeleye with the appurtenances in the county of Hereford (except a mill, two carucates of land, fifteen acres of meadow, sixty acres of wood, and ten pounds of rent in the same two parts) which John claims as his right etc. And he did not come; and he was the demandant. Therefore it is awarded that Margaret go thereof without day, and that John and his pledges of prosecuting be in mercy. Let the names of the pledges be sought.

## 74. ANON.

How jurors may be induced to agree.

In a writ of entry *sur* disseisin an inquest was joined. And after the inquest was sworn, they could not agree.

STANTON, J. Good people, you cannot agree?

STANTON, J., to John Allen.<sup>2</sup> Go and put them in a house until Monday, and let them not eat or drink.

On that commandment John put them in a house without [food or drink]. At length on the same day about vesper-time they agreed. And John went to SIR HERVEY and told him that they were agreed. Then STANTON, J., gave them leave to eat. Then on the Monday the inquest came and wanted to give a verdict in gross.<sup>3</sup> And STANTON, J., said that he wanted the story told. So the inquest told the story etc.

75. ABRAHAM *v.* ABRAHAM.

Entry *ad terminum* Husband cannot demise to wife.

John Abraham brought a writ *ad terminum qui praeteriit* against Alice, wife that was of Robert Abraham, and said that she had no

<sup>1</sup> Adam of Herwynton was appointed keeper of the rolls and writs of the Common Bench by letters patent dated 3 October, 1314 (*Calendar of Patent Rolls*, 1313-7, p. 185).\* <sup>2</sup> Apparently the marshal. See below, p. 191. <sup>3</sup> That is, a general verdict.

par le dit Robert, sun frere, qi heir il est, qe au dit A[lice] lessa a terme qe passé est.

*Hedone.* Alice fu femme le dit Robert. Jugement si a sa femme demeine puet lees fere.

*Hengham.* Il puet ester ensemble qe le lees se fist avant q'il esposa e pus fust sa femme.

*Russel.* Nous dioms qe les tenemenz demandez sunt en Certesey, ou les tenemenz sunt divisables; le quel R. en sun lit mortiel divisa ceux tenemenz a ceste Alice a terme de x. anz par ceste escrit qe cy est. (E mist avant l'escrit.)

*Hedone.* Nous dioms qe R. n'oust rien en les tenemenz mès com baroun Alice, qar ceo fust le droit Alice. Jugement si de autri droit etc.

*Hengham.* Donqe grantez vous l'entré.

*Hedone.* Jeo ne ay mie mestier a granter ne dedire, car nous dioms qe ceo fust le droit A[lice] etc.

*Hervy a Hedone.* Vous ne pledez rien a lour matir ne a eux, car il vous covent dire, si vous volez estre travers, q'il ne fust unqes seisi par quoi il poet lees faire.

*Hedone.* Nous dioms qe ceux tenemenz sunt del droit Alice, e Robert les aliena a divers gentz, e après sun decès ele repurchasa les par le *cui in vita*, issi q'il rien n'oust en les tenemenz mès com baroun etc.

*Hengham.* Abraham fust seisi e morust seisi de ces tenemenz; après qui mort Johan entra com fiz e heir etc. e lessa etc., e prest del averer.

Et alii contrarium.

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 369d, Lincoln.

John Abraham of Torkeseye by his attorney demands against Gilbert atte Parsones of Torkesey and Alice his wife six acres and a half of land, with the appurtenances, in Torkeseye as his right and inheritance, and into which Alice has no entry unless by Robert Abraham, John's brother, whose heir he is, who demised them to him for a term that is past etc. And thereupon he says that Robert his brother etc. was seised of the tenements with the appurtenances in his demesne as of fee and of right in time of peace in the time of Edw. [I.], taking thereof the esplees to the value etc. And from Robert, because he died without etc., descended the right etc. to John, the demandant, as brother and heir. And into which etc. And thereof he produces suit etc.

And Gilbert and Alice by their attorney come and defend the right of the demandants when etc. And they say that John can claim no right in

entry unless by the said Robert, his brother, whose heir he is, who demised to Alice for a term that is past.

*Hedon.* Alice was wife of Robert. Judgment, whether he could demise to his own wife.

*Ingham.* There is no incompatibility, for the demise might be made before they married and afterwards they might marry.

*Russel.*<sup>1</sup> We say that the tenements in demand are in [Torkeseye], where tenements are devisable, and R[obert] on his death-bed devised these tenements to Alice for a term of ten years by this writing. (He produced the writing.)

*Hedon.* We say that Robert had nothing in the tenements save as Alice's husband, for this was her right. Judgment, whether of another's right [you can have action].

*Ingham.* Then you admit the entry.

*Hedon.* I have no need to admit or deny it, for we say that this was Alice's right.

STANTON, J., to *Hedon.* You do not plead to their matter, nor to them. If you wish to be at traverse, you must say that [Robert] was never so seised that he could demise.

*Hedon.* We say that these tenements were Alice's right, and [Robert] alienated them to various people, and after his death she reacquired them by the *cui in vita*, so that he had nothing in them except as husband.

*Ingham.* Abraham was seised and died seised of these tenements, and after his death [Robert] entered as son and heir and demised etc. : ready to aver.

Issue joined.

#### Note from the Record (*continued*).

the tenements of the seisin of Robert his brother etc. ; for they say that Robert had married Alice, who now is Gilbert's wife, and the tenements were Alice's right and inheritance etc. ; so that Robert, of whose seisin etc., never had anything in the tenements except as Alice's husband ; and this they are ready to aver etc. Thereupon they pray judgment.

And John says that one Abraham, Robert's father, died seised of the tenements in his demesne as of fee etc. and after his death Robert succeeded him etc. as son and heir and was seised thereof, as of his own right, without (*absque hoc quod*) Alice ever having anything in them except as wife etc. ; and they pray that this may be inquired by the country. Issue is joined and a *venire facias* awarded for the quindene of Easter.

<sup>1</sup> It is hard to say from which side this story proceeds. No further notice seems to be taken of it.

76. HOESE v. QUAPPELADE.<sup>1</sup>

D'entré ou il voucha hors de degreez.

Une femme porta un bref d'entré sur disseisine vers une Isabel que tient en dowere, e dit en les queux il n'ad entré si noun par un A. que atort e sanz jugement etc. E fust celui A. baron Isabel.

Isabel voucha a garant un C.

*Tiltone.* A tiel voucher ne deit el estre receu, que mesme cesti C. est hors de les degreez, e si nous grantissoms vostre voucher si abatrioms nostre bref demeine. Jugement etc.

*Wilb.* (?) Il nous covent voucher en la manere que l'eir nostre baroun si granta la reversion de ceux tenemenz a C. en ceste court par fin levé, par vertue de quele fin nous atturnames, e il se obliga a la garantie a nous. E ceo troverez vous par record de roulle. Jugement si nous ne devons le voucher avoir.

Et fust le voucher receu de court, quod multum mirabatur pluribus.

*Tiltone.* Ore vendra C. a un autre jour e vouchera D. fiz e heir le baron.

*Hervy.* De ceo n'ad force, que tiel voucher ne chaunge mie les degreez etc.

**Note from the Record.**

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 355d, Hunt.

Walter de la Hoese by Hugh of Sautre, his attorney, demands against John of Quappelade and Aveline his wife one messuage and one carucate of land and twenty shillings of rent, with the appurtenances, in Folkesworth in the county of Huntingdon, which are extended at fifteen pounds, as his right etc. and into which Aveline has no entry unless by Geoffrey de la Hoese, who unlawfully etc. disseised Walter after the first etc.

And John and Aveline by Roger of Alyngton, their attorney, come, and they heretofore said that they hold the tenements as Aveline's dower, and that the reversion of the same tenements after the death of Aveline belongs to John of Pabenham the elder by the form of a fine<sup>2</sup> lately levied in the court of Edw. [I.] between John of Pabenham, senior, and Elizabeth his wife, plaintiffs, and Henry of Tichemersh and Isabel his wife, daughter and heiress of Geoffrey de la Hoese, deforciant of the tenements; and by this fine Henry and Isabel granted that the tenements which John of Quappelade and Aveline his wife held as the dower of Aveline, of the inherit-

<sup>1</sup> Text from Y (f. 95d).

<sup>2</sup> The fine was levied in Trinity term of 34 Ed. I., but the wife of John Quappelade is there called Alina not Avelina. (Feet of Fines, Case 93, File 18, No. 107).\*



76. HOESE *v.* QUAPPELADE.

Writ within the degrees. Voucher of the assignee of the heir of one named in the writ.

A [man] brought a writ of entry *sur disseisin* against one [Aveline], who held in dower, and said 'into which she had no entry unless by [G.], who wrongfully and without judgment etc.' And this [G.] was [Aveline's] husband.

[Aveline] vouched to warrant one C.

*Tilton.* To such a voucher [you] ought not to be received, for this C. is beyond the degrees, and if we accepted your voucher we should abate our own writ. Judgment etc.

*Willoughby.* We have to vouch in [this] manner, for the heir of our husband granted the reversion of these tenements to C. in this Court by a fine levied, and by virtue of that fine we attorned, and he bound himself to warrant us. You will find that by the record of the roll. Judgment, whether we ought not to have the voucher.

The voucher was received by the Court, but many people were much surprised.

*Tilton.* Now on another day C. will come and will vouch D. the husband's son and heir.

STANTON, J. That does not necessarily follow, for such a voucher does not change the degrees.

Note from the Record (*continued*).

ance of Isabel etc., and which after Aveline's decease ought to revert to Henry and Isabel and the heirs of Isabel, should after Aveline's decease remain entirely to John of Pabenham and Elizabeth and the heirs of John etc.; so that John de Quappelade and Aveline his wife by virtue of the fine etc. came at the suit of John of Pabenham and Elizabeth into the King's court on the quindene of Trinity, 33 Edw. [I.],<sup>1</sup> and by reason of (*pretextu*) the grant etc. attorneyed to John of Pabenham and Elizabeth. And for this etc. the same John of Pabenham freely granted for himself and his heirs that they would warrant the said tenements etc. to John of Quappelade and Aveline. And in that form they vouch to warrant John of Pabenham, who is summoned in the county of Bedford; and he now comes by summons by Adam of Harwedon, his attorney, and in the said form he warrants to them, and further vouches to warrant Henry of Tichemersh and Isabel his wife. Let him have them before the justices at York at Easter in three weeks by aid of the court etc. And they are summoned in the county of Bedford etc.

<sup>1</sup> This date is inconsistent with that of the fine which was levied in 34 Ed. I.\*

77. ANON.<sup>1</sup>

Ou un des jointz purchassours<sup>2</sup> fust receu a respondre pur l'entier etc.

Mestre Johan de Glouc[estre] porta un bref d'entré fondé sur le statut de Gloucestre vers iij. soers joinz purchacerez ; les queles firent defaute. Par qei le grant *cape* issit e retourné. A queu jour la eygnesce ensemblement ove sun baroun firent defaute. Les ij. punesceez apparurent par attourné.

*Lauf.* Par attourné ne pount il estre, car il sunt dedeinz age.

*Hervi* demanda l'attourné, e l'attourné reconust qe eles furent dedeinz age.

*Hervi* a Johan Alein. Pernez cure de lui tanke Sire William de Bereforde viegne.

E gaunt *Bereforde* vient *Hervi* lui moustra le cas l'attourné.

*Bereforde.* Quel coupe ad l'attourné? Si un *dedimus potestatem* va en pays a un chevaler ou a autre e resceit<sup>3</sup> un attourné pur gardein, ceo ne peche mie en l'attourné, einz fet en la court.

Et postea *Bereforde* dixit: R[espondez] vous attourné a ceste defaute.

*Denham.* Nous dioms qe Isabel e Sarre sunt dedeinz age e sunt tenanz del entier de sa demande, e prient q'eles puissent r[espondre] pur l'entier.

*Laufare.* Nous dioms qe Jone lour soer eygnesce est tenante de la terce partie de nostre demande, e fust le jour de cestui bref purchasé, e prest del averer, e pur sa defaute après defaute prioms seisine de terre.

*Hervi.* Il vous dient q'il sunt tenans del entier, e prest sunt a r[espondre] a vous, qar de lour defaute par le grant *cape* nule avantage ne poez prendre.

Et puis par agard de la court *Lauf.* fust chacé a resceivere lour r[esponse] pur l'entier de la tenance.

*Heng.* Isabel e Sarre qe cy sunt par attourné vouchent a garant par aide de ceste court Johan le Blund, que deit estre somonz en le conté de Oxinforde.

Et stetit vocatio.

Nota quod *Cheltone* dixit quod ratio istius recepcionis fuit pur ceo qe ceo fust lour joint purchaz. Hoc idem potest videre in quindena S. Martini in eodem termino de coheredibus in placitis de dote, et in alio placito infra in proxima pagina etc.

<sup>1</sup> Text from Y (f. 96).

<sup>2</sup> purchaz Y.

<sup>3</sup> Corr. a recevoir (?).

## 77. ANON.

On the default of one co-tenant, the others are allowed to defend for the whole, though demandant asserts that the defaulter holds a share.

Master John of Gloucester brought a writ of entry founded on the Statute of Gloucester<sup>1</sup> against three sisters who were joint purchasers. They made default. So the great *cape* issued and was returned. At that day the eldest with her husband made default. The two younger appeared by attorney.

*Laufer.* They cannot appear by attorney; they are within age.

STANTON, J., called the attorney; and he confessed that they were within age.

STANTON, J., to John Allen.<sup>2</sup> Have a care of him until Sir William Bereford comes.

When BEREFORD came, STANTON told him of the attorney's case.

BEREFORD, C.J. What fault is there in the attorney? If a *dedimus potestatem* goes into the country to a knight or another, and he receives<sup>3</sup> an attorney instead of a guardian, the fault is not in the attorney but in the Court.

Then BEREFORD, C.J., said: You attorney, answer to this default.

*Denom.* We say that Isabel and Sarah are within age and are tenants of the whole of his demand, and they pray that they may answer for the whole.

*Laufer.* We say that Joan, their eldest sister, is tenant of the third part of our demand and was so on the day of writ purchased; and that we are ready to aver; and we pray seisin of the land because of her default after default.

STANTON, J. They tell you that they are tenants of the whole, and are ready to answer you, for of their default you can take no advantage at [the return of] the great *cape*.

And afterwards, by award of the Court, *Laufer* was driven to receive their answer for the whole of the tenancy.

*Ingham.* Isabel and Sarah, who are here by their attorney, vouch to warrant by aid of this Court, John le Blund, who is to be summoned in the county of Oxford.

And the voucher stood.

Note that *Chelton* said that the reason of the acceptance [of this prayer<sup>4</sup>] was their joint purchase. The same may be seen as to coheiresses in the quindene of St. Martin in the same term among the actions for dower, and in another action below on the next page.

<sup>1</sup> Stat. Glouc. c. 7.    <sup>2</sup> Apparently the marshal of the Court. See p. 188.

<sup>3</sup> Or should it not be 'to receive'?    <sup>4</sup> To be received to defend for the whole.

78. BLAKEVILLE *v.* OSEGODEBY.<sup>1</sup>

[Forme de doun.]

Nota qe une forme de doun ou le demandant dist qe le doun se fist par W. et A. sa femme.

*Denham.* Nent par A. : prest etc.

*Grantebrigge.* Qei r[espondez] au doun W. ?

*Denham.* Nous n'avom mie mestier a r[espondre] a ceo, qe vous poez avoir bon brefe du doun W. sanz nomer A.

*Ber.* W. si est plus avant au doun et plus digne qe n'est A. Et vous a traverser le doun W. et nent A., ceo n'est pas reseivable. Par qei dites autre chose.

*Denham.* Qe W. et A. ne doneint unkes : prest etc.

Et alii contrarium.

## Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 45, Bucks.

Milicent de Blakeville and Maud her sister by their attorney demand against Robert of Osegodeby one messuage and four acres of land in Asshe which William de Blakeville and Agnes his wife gave to Robert le Bere and Beatrice his wife and the heirs of the bodies of Robert and Beatrice issuing, and which after the death of Robert and Beatrice ought to descend to Milicent and Maud, daughters and heiresses of Robert and Beatrice, by the form of the said gift etc. (*Continued on opposite page.*)

79. ANON.<sup>2</sup>

[Dowere. Eschanges.]

Nota ou dit fust : Dowere ne devez avoir, qar vostre baron etc. dona ceu mees en eschanges pur un mees en N., de queu mies vous estes dowé, jugement si de cestui mees dowere devez avoir. Et fust forelos etc.

80. BAXTERE *v.* BAXTERE.<sup>3</sup>

Ou un des joinz purchacerescs fut receu a respondre pur l'entier, tut fut ceo lour heritage.

Is[abel] de C. porta sun bref de resnable dowere vers G. de F. et Sarre sa femme et Margerie la soer Sarre, qe firent defaute. Par qei

<sup>1</sup> Text from Y (f. 108).    <sup>2</sup> Text from Y (f. 141).    <sup>3</sup> Text from Y (f. 141).



78. BLAKEVILL *v.* OSEGODEBY.

Formedon. Gift by husband and wife alleged. To traverse gift by wife is insufficient.

In a formedon the demandant said that the gift was made by W. and A. his wife.

*Denom.* Not by A. ; ready etc.

*Cambridge.* What do you answer to the gift of W. ?

*Denom.* We have no need to answer to that, for you can have a good writ on W.'s gift without naming A.

BEREFORD, C.J. W. is more important in the gift and more worthy than A. And for you to traverse the gift of [A.] and not [W.]<sup>1</sup> is not admissible. So say something else.

*Denom.* W. and A. never gave ; ready etc.

Issue joined.

**Note from the Record** (*continued*).

And Robert by his attorney comes and defends their right when etc. And well he denies that William and Agnes gave the tenements with the appurtenances to Robert and Beatrice as Milicent and Maud by their writ suppose. And of this he puts himself on the country. Issue is joined and a *venire facias* awarded for the octave of Hilary.

## 79. ANON.

Dower. An exchange pleaded.

[In an action of dower] it was said : Dower you cannot have, for your husband etc. gave this messuage in exchange for a messuage in N. and with that messuage you are endowed : judgment, whether you can have dower of this messuage. And [the demandant] was barred.

80. BAXTERE *v.* BAXTERE.

Two are sued jointly. One makes default. The other asserts sole tenure and desires to defend the whole. The assertion cannot be traversed.

Isabel of C. brought her writ *de rationabili dote* against G. of F. and Sarah his wife, and Margery, Sarah's sister, who made default.

Our text reverses the initials.

le grant *cape* issit et returné. A queu jour G. et Sarre sa femme firent defaute après defaute. Et Margerie r[espondi] par gardein, et dit qe ele fust tenante de l'entier et prest fut a r[espondre].

Lendemein *Hengham*. Sire a cel bref de dowere ou Margerie dist q'ele est tenante de l'entier, nous dioms qe Johan de C. morust seisi de ces tenemenz. Après qi morte Sarre et M[argerie] entreront com ij. filles et un heir, et issi furent seisis le jour de nostre bref purchasé, et uncore sunt ; et prest del averer.

*Hervi*. Vous supposez par vostre bref q'il sunt joinz tenans ; et l'une fet defaute, et l'autre appiert et dit qe ele est soule tenante. Pur qei ne deit ele estre r[eceu] a resp[ondre] ?

*Hengham*. Si les tenemenz furent recovrez enterement vers une, jeo entenke qe l'autre avereit l'assise de novele disseisine de la moitié.

*Hervi*. Vous dites mal.

*Hedon*. Nous l'avom veu cienz tiel averement estre receu.

*Hervi*. Entre qi et qi ?

*Hedon* nescivit dicere.

*Hervi*. Vous ne veites unkes tiel averement estre receu ne jammès ne verrez averement estre receu entre le demandant et une joinz tenans ou il prie estre receu a respondre pur l'entier.

*Hervi*. Qei r[espount] Margerie ?

*Laufare* dit qe Margerie est coverte de baron Johan de C. par noun, et fut le jour de cesti bref purchasé. Et demandoms jugement de cestui brèf.

*Hervi*. Donc vous waivez le r[espons] pur la purpartie Sarre ?

*Laufare*. Sire, oil.

*Hervi* a *Ridenal*. Entrez ceste demande et sevez les.

Et *Laufare* fuit vituperatus quia tam male placitavit.

Et postea *Hervi* cepit rotulum et dixit : Demandez G. de F. et Sarre sa femme. (Il ne viegnent mès font defaute après defaute.) Si agarde la court qe Is[abel] recovere la terce partie de la moitié de un mees et carué de terre etc. vers G. et Sarre sa femme. Et gaunt a l'autre moitié suyez bref de fere venir enqueste a savoir mon si Margerie est coverte de baron et fust le jour del bref purchasé etc.<sup>1</sup>

<sup>1</sup> Nota quod simile istius placiti reperies in quaterno de placitis de ingressu in eodem termino de coniunctim feoffamento. *This is written in Y, as part of the text.*

Therefore the great *cape* was issued and returned. On that day G. and Sarah his wife made default after default. And Margery answered by guardian, and said she was tenant of the whole and was ready to answer.

*Ingham* next day. Sir, to this writ of dower where Margery says that she is tenant of the whole, we say that John of C. died seised of these tenements. After his death Sarah and Margery entered as two daughters and one heir, and so were seised the day our writ was purchased, and still are; and we are ready to aver it.

STANTON, J. By your writ you suppose that they are joint tenants; one makes default, the other appears and says she is sole tenant. Why ought she not to be received to answer?

*Ingham*. If the tenements were recovered in entirety against the one, I think that the other would have the assize of novel disseisin for the moiety.

STANTON, J. You are wrong.

*Hedon*. We have seen such an averment received here.

STANTON, J. Between what parties?

*Hedon* could not say.

STANTON, J. You never saw and never will you see such an averment received between the demandant and a joint tenant, where the latter prays to be received to answer for the whole.

STANTON, J. What does Margery answer?

*Laufer* said that Margery was covert by a husband, John of C. by name, and was so the day the writ was purchased. And [he prayed] judgment of this writ.

STANTON, J. Then you waive the answer for Sarah's share.

*Laufer*. Yes, Sir.

STANTON, J., to Ridenal. Enter this demand and sever [the tenants.]

And *Laufer* was blamed for pleading so badly.

And afterwards STANTON, J., took the roll and said: Call G. of F. and Sarah his wife. (They do not come, but make default after default.) This Court awards that Isabel recover the third part of the moiety of a messuage and carucate of land etc. against G. and Sarah his wife. And as to the other moiety, sue a writ to summon an inquest to [find] whether Margery is covert by a husband and was so on the day of writ purchased.<sup>1</sup>

<sup>1</sup> Our text gives a reference to a similar decision: apparently our case 77.

## Notes from the Record.

## I.

De Banco Rolls, Mich., 4 Ed. II. (No. 183), r. 448, Warwick.

Cecily the widow of Thomas le Baxtere by John of Ichyngton her attorney demanded against Henry of Herdeneheued and Felicia his wife and Amice the daughter of Thomas le Baxtere the third part of one messuage two virgates of land two acres of meadow and twenty acres of wood with the appurtenances in Maxstoke as her dower etc. so that Henry Felicia and Amice were heretofore summoned to be here on the quindene of St. Michael last past to answer Cecily of the said plea. And Henry Felicia and Amice at that day made default. And then the sheriff was ordered to take the third part into the king's hand; and the day etc.; and to summon them to be here at this day. And the sheriff sends the day of the taking and (says) that he summoned etc. And now come as well Cecily as Amice by Thomas of Sutehull her guardian and Henry and Felicia come not; and Cecily seeks<sup>1</sup> judgment of the default of Henry and Felicia and that seisin be adjudged to her etc. for the share etc. by their default etc. and that Amice answer for the residue etc.

[And Amice comes] and seeks that by the default of Henry and Felicia she do not lose the said third part on the ground that she is ready to answer Cecily thereof, and she seeks to be admitted and she is admitted etc. And she says that this default ought not to hurt her; for she says that she has a husband John Falk by name to whom she was married at Maxstoke in the same county; and she had him as her husband on the day when the writ was purchased etc. And thereupon she seeks judgment.

[The whole of the above entry is vacated by the cancellation of the first two or three words of each line of the enrolment and by the marginal entry 'vacat hic quia error' beneath which 'alibi in hoc termino' is written.]

## II.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 464, Warwick.

Cecily, the widow of Thomas le Baxtere, by John of Ichynton, her attorney, heretofore demanded against Amice, the daughter of Thomas le

81. BROKE *v.* TAYLARD.<sup>3</sup>

[Dowere : ou l'attourné fut enprisone.]

Nota qe la ou A. qe fu femme G. porta sun bref de douwere vers C. C. vient en court par attourné et voucha a garant Johan Loveday, et avoit jour. Le viconte returna nul bref. Et A. se proffri.

<sup>1</sup> The rest of the sentence is written on an erasure.    <sup>2</sup> The line of hyphens    <sup>3</sup> Text from Y (f. 141).



Notes from the Record (*continued*).

Baxtere, and Henry of Herdeneheued and Felicia his wife a third part of one messuage, two virgates of land, two acres of meadow, and twenty acres of wood with the appurtenances, in Maxstoke as her dower etc.; so that Amice and Henry and Felicia made default in court here, to wit, on the quindene of St. Michael, after summons etc.; whereupon the sheriff was ordered to take the third part into the King's hand; and the day etc.; and to summon them to be here this day, to wit, the octave of St. Martin etc. And the sheriff now witnesses the day of the taking and that he summoned etc.

And now comes Cecily by her attorney and likewise Amice by her guardian; and Henry and Leticia (*sic*) do not come. And Amice says as to the parcel which falls to her etc., to wit, the moiety etc., that Cecily ought not to be answered to her writ etc.; for she says that Amice has and had on the day when the writ was purchased, a husband, John Falke by name. And this she is ready to aver etc.; and she prays judgment.

And Cecily says that Amice was sole and without a husband on 24 June, 1310 (3 Edw. II.), when she purchased her writ. And she prays that this may be enquired by the country. Issue is joined and a *venire facias* awarded for the morrow of the Purification.

And Cecily offered herself on the fourth day against Henry and Felicia as to the other moiety of the tenements with the appurtenances. And prayed that seisin thereof might be adjudged her by their default etc. And because Henry and Felicia do not come, and they had heretofore made default etc. as is aforesaid. Therefore it is awarded that Cecily recover her seisin of the moiety etc. against Henry and Felicia by reason of the default etc. And Henry and Felicia are in mercy etc. And because it is witnessed here that Thomas, late the husband etc., died seised of the tenements whereof etc. the sheriff is ordered that enquiry be made of the damages; and that he make the inquisition known here on the quindene of Easter etc. At which day the sheriff did not send the writ. Therefore as before let it be enquired etc. And let him make it known here how etc. on the morrow of St. John the Baptist etc.

81. BROKE *v.* TAYLARD.

An attorney imprisoned for misconduct.

A., wife that was of G., brought her writ of dower against C. He came into court by attorney and vouched John Loveday to warrant and had a day. The sheriff returned no writ, and A. proffered herself.

*Herry* a l'attourné. Beal ami avez suy bref?

*L'attourné.* Sire, oyl.

*Hervi.* Ou est vostre bille qe tesmoigne?

*L'attourné.* Sire, jeo suy nule bille, qar jeo bailla a mon mestre.

*Herry.* Qei voudriez vous adonqe?

*L'attourné.* Sire, jeo prie un *postea*.

*Hervi* a l'attourné. Malvois ribaud, vous ne l'avera mie! Mès pur ceo qe vous avez vouché et n'avez suy bref pur somoundre vostre garant en delaiant la femme de sun dower, si agard la court qe vous alez a la prison.

*L'attourné.* Jeo prie qe jeo puisse trover meinpernours.

*Hervi.* Nous ne voloms nule meinprise; mes demorrez tanqe vous seez bien chastiez.

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 484, Hants, Oxford, Berks.

Thomas Taylard, by William Lucy, his attorney, offered himself on the fourth day against John Loveday on a plea that he be here at this day to warrant to him the third part of two messuages and sixty-eight acres of land with the appurtenances in Toppele,<sup>1</sup> in the county of Southampton, which Denise, the widow of Henry atte Broke, in court here claims in dower etc., and whereof etc. And he came not. And the sheriffs of Oxford and

#### 82. ANON.<sup>2</sup>

[*Replegiari.*]

Nota ou le defendant en un replegiari fut mis en exigende et vient en court et trova meinprise de estre a sun jour a r[espondre] au pleintif. Et Ber. comanda un *supersedeas* a viconte q'il surseit del exigende.

#### 83. ANON.<sup>2</sup>

Replevine. *Capias.*

Nota qe la ou homme vient par le *capiatur* en un *replegiari facias*.

*Willuby.* Sire, il est venuz par le *capiatur* en un *replegiari*.

*Ber.* Pur qei noun? N'est ceo un bref de trespas? Et si ceo

<sup>1</sup> Not identified.

<sup>2</sup> Text from Y (f. 170).

STANTON, J., to the attorney. Fair friend, have you sued a writ?

Attorney. Yes, Sir.

STANTON, J. Where is your bill which witnesses it?<sup>1</sup>

Attorney. Sir, I sued no bill, for I delivered it<sup>2</sup> to my master.

STANTON, J. What do you want then?

Attorney. Sir, I pray a *postea*.<sup>3</sup>

STANTON J., to the attorney. You wicked rascal, you shall not have it! But because you, to delay the woman from her dower, have vouched and have not sued a writ to summon your warrantor, this Court awards that you go to prison.

Attorney. I pray that I may find mainprise.

STANTON, J. We will have no mainprise, but stay [in gaol] until you are well chastised.

**Note from the Record** (*continued*).

Berks were ordered *sicut prius* to summon him (on the ground that the sheriffs heretofore sent no writs etc.). And the sheriffs did nothing thereon nor sent the writs; therefore the sheriffs are ordered *sicut pluries* to summon him to be here on the octave of Hilary etc. *prece parcium* etc. The same day is given to Denise here in the Bench. And the attorney of Thomas is told that he sues at his peril etc.

**82. ANON.**

Outlawry process in replevin.

The defendant in a replevin was put in exigent, and came into court and found surety to be there at his day and answer to the plaintiff. And BEREฟอร์ด, C.J., commanded the sheriff to surcease the exigent.

**83. ANON.**

Process by *capias* in replevin.

In an action of replevin [the defendant] came by *capias*.

Willoughby. Sir, he has come by *capias* in a replevin.

BEREฟอร์ด, C.J. Why not? Is not it a writ of trespass? Were

<sup>1</sup> The meaning of bill in this context may perhaps be gathered from the following extract from the Common Bench Rolls of Hil., 3 Ed. II.

Porrexerunt coram iusticiariis quandam billettam de attornato admittendo in hec uerba.

I. de P. et M. uxor eius ponunt loco

suo R. de W. uersus E. que fuit uxor R. de R. de placito terre. (De Banco Rolls, No. 180, r. 18d.)\*

<sup>2</sup> Perhaps the writ. The master is client.

<sup>3</sup> This word may, perhaps, refer to the summons *sicut pluries* mentioned in the record.\*

ne fut, chescon ribaut du pays poeit prendre les avers sun veisin, et pus qaunt il se duist attacher, il irreit defuant de pais en pais.

*Beref.* Demandez le pleintif.

Et dit fut q'il fut essonié.

*Ber.* au mareschal. - Pernez cure de sun corps et menez le a la Flete.

84. BROKE *v.* BROUGHTON.<sup>1</sup>

Nota hic qaunt le chiefe seignur purchace dedeinz le fee sun tenaunt, e ou il fut chacé a r[espondre] a l'avowerie sun tenaunt etc.

Nota qe la ou Laurence de la Broke se plaint de Alice la Blunde qe atort prist ces avers.

*Lauf.* defendit e avowa la prise bone etc., par la r[eson] qe un G. ael L. tient un mies e une carué de terre de B. ael mesme cestui Alice par homage e escuage, scilicet qaunt l'escu curt a xl. souz, ij. souz etc., e par les services de xij. souz par an; de B. descendit le droit des services a C. com a fiz e heir; de C. a Alice e Juliane com a ij. filles e un heir. E prie aide de Juliane.

Et habuit.

Alio die Juliane se joint, e eux deus avowent pur les xx. souz arere par xx. anz devant le jour de la prise.

*Hedon.* Vostre ael fut le tenant ael Laurence, e seisi de sun homage, e les tenemenz pur quei vous avowez de deinz son fee. Jugement si en son fee sur lui puissez avowerie faire.

*Lauf.* Nostre verité est qe un C. tient ses tenemenz de nostre ael par les services avantdiz; e pus l'ael Laurence purchacea ses tenemenz en demeine a tenir des chiefs seignurages pus le statut. Jugement si sur lui com sur nostre verrai tenant ne puissoms avowerie fere.

Et in fine Hedon fut chacé a r[espondre] a lour avowerie.

*Hedon.* Laurence descleime a tenir de eux.

*Hervi.* Si agarde ceste curt qe Laurence aille a dieu sanz jour, e Alice e Juliane en merci.

Et ex hoc nota qe chief seignur eyaunt regard a sun purchace est tenant sun tenant.

<sup>1</sup> Text from Y (f. 171d).



it not, every rascal in the country might take his neighbour's beasts, and, when he was to be attached, he would go fleeing from place to place.

BEREFORD, C.J. Call the plaintiff.

It was said that he was essoined.

BEREFORD, C.J., to the marshal. Have a care of [the defendant's] body and take him to the Fleet.

#### 84. BROKE *v.* BROUGHTON.

Lord, mesne, and tenant. After *Quia emptores* the lord purchases from the tenant. The mesne avows upon him for services arrear.

Lawrence de la Broke complains of Alice la Blunde that wrongfully she took his beasts.

*Laufer* defended and avowed the taking good etc., for the reason that one G., the grandfather of Lawrence, held a messuage and a carucate of land of B., the grandfather of Alice, by homage and scutage, to wit, when the scutage runs at forty shillings, two shillings etc., and by the services of twelve shillings a year. From B. the right of the services descended to C. as son and heir; from C. to Alice and Juliana as two daughters and one heir. And she prays aid of Juliana.

It is granted.

On another day <sup>1</sup> Juliana joins herself, and they two avow for the twenty shillings arrear for the twenty <sup>2</sup> years before the taking.

*Hedon*. Your grandfather was the tenant of Lawrence's grandfather, who was seised of his homage, and the tenements for which you avow were within his fee. Judgment, whether you can make an avowry on him within his fee.

*Laufer*. The truth is that one C. held these tenements of our grandfather by the services aforesaid; and afterwards the grandfather of Lawrence purchased these tenements in demesne to hold of the chief lords after the Statute.<sup>3</sup> Judgment, whether we cannot make avowry on him as on our very tenant.

And in the end *Hedon* was forced to answer to their avowry.

*Hedon*. Lawrence disclaims holding of them.

STANTON, J. This Court awards that Lawrence take farewell without day, and that Alice and Juliana be in mercy.

And from this note that the chief lord in regard to his purchase is tenant of his tenant.

<sup>1</sup> See note 1 on p. 197.

<sup>2</sup> Reliance cannot be placed on the figures.

<sup>3</sup> *Quia emptores*.

**Note from the Record.**

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 181, Bucks.

Beatrice of Brogthon was attached by a writ on the statute to answer Lawrence of Broke of a plea why she, together with Richard her son, took Lawrence's beasts and unlawfully detained them against gage and pledges etc. And thereupon Lawrence complains that Beatrice together etc. on the [21 August, 1209] Thursday next after the feast of the Assumption of the Blessed Mary, 3 Edw. [II.], in the vill of Chesham, in a certain place which is called Wylliameshull, took two horses, and in another place, which is called the Sevenacres, took two other horses of the same Lawrence and unlawfully detained them against gage etc. until etc.; damages one hundred shillings. And thereof he produces suit.

And Beatrice, by Adam of Harwedon, her attorney, comes and defends the tort and force when etc. And avows the taking as good; and lawfully, because she says that Lawrence holds of Beatrice and a certain Denyse, her sister, who is present in court and joins herself to Beatrice in

85. ROGUS *v.* HONYNGHAM.<sup>1</sup>

On l'avowerie fut fete pur chanterie, e pus le pleintife pria eide del evesqe e del patroun etc.

Un A. persone del eglise de E. se pleint qe B. atort prist un soen boefe.

*Hengh.* defendi e avowa la prise pur lui e conust pur sun parcener etc., par la reson qu'il tient de eux ij. bovez de terre en C. par les services de trover un chapeleyn messes chaunt[ant] en la chapel de C., e a trover qaunt qe mestier soit a celes messes par dimeinches, mekrediz e venderdiz par mi tut l'an; des queux services H. de C. lour auncestre etc. fu seisi par my la main Johan jadis persone de C. predecessour etc., com par mi la main sun verrai tenant. E pur la chanterie arere par x. anz, issi avowe il la prise e conust pur sun parcener de ij. boefs.

*Denham.* Sire, nous trovames nostre eglise de cele chanterie deschargé, e prioms aide del patroun e del evesqe.

Ideo sum[moneantur] quod sint in quindena Hillarii etc.

**Note from the Record.**

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 293d, Leic.

Roger of Honyngham was summoned to answer Richard de Rogus, parson of the church of Kilmondecote,<sup>2</sup> of a plea wherefore he took a mare of

<sup>1</sup> Text from Y (f. 173.)<sup>2</sup> Kimcote by Lutterworth. Cotes Daval is hard by.

**Note from the Record** (*continued*).

answering etc.<sup>1</sup> one messuage and forty acres of land with the appurtenances in the aforesaid vill (whereof the aforesaid places in which etc. are parcel) by fealty and the service of eleven shillings and tenpence a year and the service of finding one man in autumn to reap for ten days at the board (*ad cibum*) of Beatrice and Denyse ; of which fealty and services William of Broghton, father of Beatrice and Denyse, whose heirs they are, was seised by the hands of Lawrence of Broke, grandfather of Lawrence, whose heir he is. And because the service of eleven shillings and tenpence was in arrear for twenty years before the day of the aforesaid takings, he took the beasts in his fee, as well he might.

And Lawrence says that Beatrice and Denyse cannot avow the aforesaid takings as lawful in this behalf ; for he says that he does not hold the messuage and forty acres of land in which etc. of the same Beatrice and Denyse, nor does he claim to hold of them. Therefore it is awarded that Lawrence go without day and that Beatrice and Denise be in mercy for the aforesaid unlawful avowry etc.

85. ROGUS *v.* HONYNGHAM.

Aid of patron and ordinary granted where avowry is made upon a parson for masses due by reason of tenure.

One A., parson of the church of E., complains that B. wrongfully took an ox of his.

*Ingham* defended and avowed the taking for himself and made cognisance for his parcener, for the reason that he held of them two bovates of land by the services of finding a chaplain to sing masses in the chapel of C., and to find whatever might be needful for the masses on Sundays, Wednesdays and Fridays all the year round. Of these services H. of C., their ancestor etc., was seised by the hand of John, formerly parson of C., predecessor etc., as by the hand of his very tenant. And for the chantry arrear ten years he avows the taking of two oxen and makes cognisance for his parcener.

*Denom.* Sir, we found our church discharged of this chantry, and we pray aid of the patron and the bishop.

Therefore let them be summoned for the quindene of Hilary etc.

**Note from the Record** (*continued*).

Richard's and wrongfully detained her against gage and pledges etc. And thereupon Roger, by Simon Savage, his attorney, complains that on [Sept. 9, 1309] Tuesday the morrow of the Nativity of B. V. Mary in A.R. 3, at Kilmundecote in a place called Wolvedale,<sup>2</sup> he took Richard's said

<sup>1</sup> The word 'cras' is written in the margin of the roll opposite this word.\*

<sup>2</sup> Or Wolnedale.

Note from the Record (*continued*).

mare and unlawfully detained her against gage and pledges, until etc. : damages, forty shillings. And thereof he produces suit etc.

And Roger, by William de Jaunvile, his attorney, comes and defends tort and force, when etc. ; and he says that on the said day and year he took two mares of Richard's. And thereupon, in his own name and as bailiff of his, Roger's, wife Alice and of one John, son of Hugh Burdet, he avows the taking good : and lawfully, for he says that Richard holds of them, Roger, Alice and John, as of the right of Alice and John, a messuage and thirty acres of land in Cotesdeyville by fealty and the service of finding at his, Richard's, cost every week throughout the year, thrice a week, to wit, on Sunday, Wednesday and Friday, a chaplain to celebrate divine service (*divina celebrantem*) in the chapel of St. Giles the Abbot belonging to Alice, Roger and John at Cotesdeyville ; and of these services Roger and Alice and also Hugh Burdet, father of John, whose heir [John] is, were seised by the hands of one Brian, sometime parson of the said church, Richard's predecessor ; and because the fealty and the said chantry (*cantaria*) were

86. ANON.<sup>1</sup>

Ou la partie fut nounsuy e return nent agardé etc.

Nota ou Johan e W. firent le plevissement de un chival dount la purpartie<sup>2</sup> fut lour en comune vers un Geoffray de C., e le procès continué tanke en banke a quinzeine de Seint Martin. A queu jour Johan ne suyt point. Geoffray pria return pur la suite<sup>3</sup> J. W. se profrist de pleder.

*Hervy.* Coment serreit return agardé vers celui qe est prest a pleder ?

E adonqe pur certain ne W. fut receu a pleder ne G. ne poet return avoir ; mes la parole amorti etc.

87. SOMERY *v.* BURMINGEHAM.<sup>4</sup>

Ou le heir fut chacé a respoudre e nent nommé heir en le bref.

Un Jon porta son bref de dette vers C. e demanda xx. livres, les queux il ly dut. Le bref fut : 'Precipe C. quod iuste etc. reddat J. xx. libras quas ei debet.'

*Heddone* demanda ceo q'il avoit de la dette.

E il mistrent avant fet qe dit qe H. pere C. granta pur sei e pur ses heirs estre tenuz a Jon en xx. livres.

<sup>1</sup> Text from Y (f. 173d).

<sup>2</sup> *Corr.* proprete (?).

<sup>3</sup> *Corr.* nounsuite (?).

<sup>4</sup> Text from Y (f. 243).



Note from the Record (*continued*).

arrear to them for twelve years before the day of the taking, he took these beasts in form aforesaid, within his fee, as well he might etc.

And Richard says that on the day when he was instituted in (*de*) his church, he found that church discharged of the said service; and thereupon he says that he cannot answer therefor without Henry Ruwaude, patron of the church, and John, Bishop of Lincoln, diocesan of that place; and he prays that they be summoned etc.

And Roger says that in truth he took the beasts for the said services which were arrear to him, Alice and John, as bailiff etc. as aforesaid; and thereupon he says that he cannot bring (*deducere*) this matter into judgment without Alice and John; and he prays that they be summoned to answer along with etc.

Therefore be the patron and bishop summoned to be here in the octave of the Purification to sue along with etc. (per H. de Stanton); and likewise be Alice and John summoned that they then be here to answer along with etc.

## 86. ANON.

Replevin by two owners of a horse. One does not prosecute.

John and W. made replevin of a horse, the [property] in which was theirs in common, against one Geoffrey of C., and the process was adjourned in the Bench until the quindene of St. Martin. On that day John does not prosecute. Geoffrey prayed return for the [nonsuit] of John. W. proffered himself to plead.

STANTON, J. How should a return be awarded against one who is ready to plead?

And then for certain neither was W. received to plead, nor could Geoffrey have the return; but the suit expired.

87. SOMERY *v.* BURMINGEHAM.

Debt. A writ in the *debet* against the heir upheld.<sup>1</sup>

One John brought his writ of debt against C. and demanded twenty pounds 'which he owed him.' The writ ran: 'Command C that justly etc. he render to J. twenty pounds which he owes.'

*Hedon* asked what he had for the debt.

They produced a deed, which said that H., father of C., grante for himself and his heirs to be bound to John in twenty pounds.

<sup>1</sup> See Reg. Brev. Orig. f. 140.

*Heddone.* Nous demandons jugement de la variance entre bref e le especialté, qar le bref suppose qe nous mesme sumes partie au contrat, le especialté veut qe nostre pere, qi heir nous sumes, fut partie au contrat, la ou il poet avoir hu bon bref a dire 'Precipe C. filio et heredi etc.'

*Denham.* Est ceo le fet vostre auncestre ?

*Heddone.* Nous avom<sup>1</sup> mestier a dedire ne a conustre, qar nous sumes au batement de cesty bref.

*Hervi.* Vous diriez ben si ceo fut play de terre ou bref de garrantie de chartre. Mès en cest action<sup>2</sup> personel assez est le bref le especialté acordant.

Et postea respondit ulterius etc.

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 326d, Warwick.

William, the son of William of Burmingeham, in mercy for divers defaults.

The same William was summoned to answer Percival de Somery of a plea that he render to him ten pounds which he owes to him and unlawfully detains etc. And thereupon Percival by John le Butiller, his attorney, says that Percival on [8 July, 1294] the Thursday next after the feast of the Translation of St. Thomas Martyr in 22 Edw. [I.], at Aspleye,<sup>3</sup> sold to William of Burmingeham, father of William the son of William, whose heir he is, a coverlet (*coopertorium*) and an iron collar (*gorgerum*) for the ten pounds which were to be paid to him at the feast of the Nativity of the Blessed Mary in 24 Edw. I. [8 September, 1296], and that William the father etc. bound himself and his heirs etc. for faithfully making payment of this sum. And

#### 88. HOTOT *v.* RYCHEMUND.<sup>4</sup>

Ou il fut osté de ley par un surmissioun nent testmoigné par especiauté etc.

Un Alein Touf' porta un bref de dette vers W. de Richemond e demanda xiiij. livres par la r[eson] q'il li granta sa eglise de N. a terme de xj. aunz, rendant par an vj. (?) livres, e s'il fut ousté durant le terme par lui ou par son procurement q'il ly fut tenuz en les xiiij. livres, e de ceo mit avant fet, e il ousta etc.

*Denham* defendi e dit qe la ou Alein demande ceste dette par la r[eson] q'il dut avoir ousté dedeinz un terme, q'il n'y ousta point: prest est a defendre par sa ley.

<sup>1</sup> *Corr.* navom (?).    <sup>2</sup> acton Y.    <sup>3</sup> Perhaps Aspley, three miles north-west of Nottingham.    <sup>4</sup> Text from Y (f. 243).

*Hedon.* We pray judgment of the variance between writ and specialty, for the writ supposes that we ourselves are party to the contract, [and] the specialty says that our father, whose heir we are, was party to the contract; whereas he might have had a good writ saying 'Command C., son and heir etc.'

*Denom.* Is this your ancestor's deed?

*Hedon.* We have no need to confess or deny, for we are abating this writ.

STANTON, J. What you say would be right in a plea of land or a writ of warranty of charter. But in this personal action the writ and specialty are sufficiently accordant.

And afterwards he answered over.

#### Note from the Record (*continued*).

that neither William the father etc. in his lifetime nor William the son of William had yet paid the money to Percival, but always refused to pay and still refuse. Damages one hundred shillings. And thereof he produces suit. And he proffers a certain writing under the name of William the father etc. which witnesses the debt etc.

And William by Robert of Lichfeld, his attorney, comes and defends the tort and force when etc. And he cannot deny that the writing is the deed of William his father etc., and that he is the heir of William his father etc. Therefore it is awarded that Percival recover the ten pounds against him and likewise his damages which are taxed by the justices at forty shillings, and William is in mercy etc. And be it known that the writing is cancelled here in court etc.

Damages forty shillings.

#### 88. HOTOT *v.* RYCHEMUND.

Debt on specialty with averment of a performed condition. Wager of law excluded. *Volenti non fit iniuria*.

One Alan [de Hotot] brought a writ of debt against W. de Richmond and demanded fourteen pounds for the reason that [W.] granted [A.] his church of N. for a term of eleven years, rendering six pounds a year, and if [A.] was ousted during the term by [W.] or by his procurement, then [W.] would be bound to [A.] in the fourteen pounds (and for this he produced a deed), and [W.] ousted [A.].

*Denom* defended and said: Whereas Alan demands this debt because he was ousted, so he says, within [the] term, [W.] did not oust him: ready to defend by his law.

*Wilby.* A ceo n'avendrez my, qar ceo chiet en conisance du pais.

*Ber. a Denham.* Volez pais?

Si vous agardez.

*Ber.* Nous ne agarderom jammès la ley en ceo cas.

Et hoc mirabantur pluribus.<sup>1</sup>

Nota<sup>2</sup> qe ley soeffre home de sa folie demene se put obliger en c. livres a paier a certain jour s'il ne face la tour de Loundres venir a West[moustier]. Unde *BER. Volenti non fit iniuria*, tut die ley escrit *Nemo obligatur ad impossibile*.

#### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 211, Lincoln.

Geoffrey of Rychemund, parson of a third part of the church of Foletteby, was summoned to answer Alan of Hotot of a plea that he render to him fourteen pounds ten shillings which he owes to him, and unlawfully detains etc. And thereupon Alan by Nicholas of Welton, his attorney, says that Alan on [8 October, 1306] the Monday after the feast of St. Michael, 34 Edw. [I.], sold a horse to Geoffrey at Lincoln for forty three shillings and fourpence to be paid on the feast of St. Martin next following; and also that Geoffrey, lately parson of the church of Thorp by Newerk, was duly condemned by the ordinary of the place [to pay] to Alan his immediate successor in that church fourteen pounds six shillings and eightpence for certain defects found in the chancel and in the houses of the rectory of the church at the time of Geoffrey's deprivation (*privacionis*); and that for the payment of that money it was agreed between them on [19 July, 1306] Sunday, the feast of St. Kenelm the Martyr, 34 Edw. I., at Lincoln, thus, that Geoffrey [should] demise (*demisit*) to Alan a third part of the church of Foletteby<sup>3</sup> to hold from [1 Aug. 1307] the feast of St. Peter's Chains, 35 Edw. I., for the term of eleven years next ensuing for ten marks to be paid annually to Geoffrey, and Geoffrey in allowance of the defects aforesaid would allow to Alan two marks of the aforesaid ten marks in every year of the term, and if it should happen that Alan could not hold the third part of the church in

#### 89. ANON.<sup>4</sup>

Ou defaute en play de grande assise fut savé etc.

Nota ou le profre en play de grande assise fut chalengé le 3<sup>e</sup> jour par le tenant qe pria coment il devoit departir. Le demandant pria qe les iiij. chivalers fuissent demandez.

*Willuby.* A ceo n'avendrez mie ore, car vostre plee si est discontinué e issi amorti; e demandoms jugement.

<sup>1</sup> *Sic.* <sup>2</sup> This note immediately follows the preceding case. <sup>3</sup> Mod. Fulletby. Text from Y (f. 275d).



*Willoughby.* To that you cannot get, for this lies in the knowledge of the country.

BEREFORD, C.J., to *Denom.* Will you have the country?

[*Denom.*] If you award it.

BEREFORD, C.J. We will never award the law in this case.

This seemed strange to many people.

Note that the law will suffer a man of his own folly to bind himself to pay on a certain day if he do not make the Tower of London come to Westminster. Whereof said BEREFORD, C.J. : *Volenti non fit iniuria*, although the written law says *Nemo obligatur ad impossibile*.<sup>1</sup>

**Note from the Record** (*continued*).

peace till the end of the term, then Geoffrey should be bound to Alan in the residue of the fourteen pounds six shillings and eightpence, if any part thereof should not have been allowed to him, to be paid to Alan on the Christmas Day following such impediment; and that when Alan had held the third part of the church for a year and a half only and during that time forty shillings had been allowed him according to the covenant, Geoffrey ejected (*amouit*) Alan from the third part of the church, whereby an action accrued to Alan for demanding the residue of the debt which had not been allowed; (and he says that) Geoffrey has not paid him the monies but has refused to pay them to him; damages ten marks. And thereof he produces suit etc. and he proffers a writing indented between them which witnesses the covenant and the demise etc.

And Geoffrey comes and defends tort and force when etc. And well he confesses that the writing is his deed, but he says that the writing ought not to prejudice him, because he never ejected Alan from the third part of the church as he alleges; and as to the forty-three shillings and fourpence in which Alan asserts that Geoffrey was bound to him for the horse etc. he denies (*defendit*) that he ever at any time bought a horse from Alan, or that in any penny of the whole debt aforesaid is he bound to him. And of this he puts himself on the country. Issue is joined and a jury summoned for the morrow of the Purification.

89. ANON.

Writ of right. Default after mise.

In a plea [with issue to] a grand assize [the demandant's] proffer [of himself] on the third day was challenged by the tenant, who prayed [judgment] as to how he should leave [the court]. The demandant prayed that the four knights should be called.

*Willoughby.* To that you cannot get, for your suit is discontinued and therefore dead. We pray judgment.

<sup>1</sup> See *de Reg. iuris* in Sexto, reg. 6 et 27.

*Laufar.* A. ne fut nent demandé, par quei nule defaute en sa persone ne poez attacher; e de ceo vouchoms recorde.

*Ber. a Willuby.* Volez vous tenir a cele defaute e demorer en jugement?

*Willuby* ne osa mie tenir, einz pria qe les chivalers fuissent demandez.

Nota qe *Herle* e altres plussours serianz disoient qe par reddour de lei la defaute fut clere.

## 90. CARLISLE (BISHOP OF) *v.* MULCASTRE.<sup>1</sup>

[*Quod permittat. Vewe.*]

Ceo vous moustre Johan Eveske de Cardoille, persone del eglise de N., qe cy est, qe Nichole de N., qe illuges est, a tort ne lui soeffre avoir sa comune pasture en N. appurtenant a sun franc tenement en mesme la ville, c'est a savoir en c. acres de more e c. acres de bruere a comuner ove tote manere de animaille par mi tut l'an com avoir deit: et pur ceo a tort qe un J. persone del eglise de N. predecessour mesme cestui Evesqe fut seisi com de fee e de droit de sa eglise de N. avantdite en temps etc., les espleez etc.; e qe tiel soit sun droit e le droit de sa eglise de N. avantdite il en ad suite e dreigne etc.

*Scrop* defendi e demanda la vewe des tenemenz a qei la comune est apendant.

Et habuit etc.

### Note from the Record.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 327d, Cumberland.

Robert of Mulcastre in mercy for several defaults etc.

The same Robert was summoned to answer John, bishop of Carlisle, parson of the church of Aspatrik,<sup>2</sup> of a plea that he permit him to have the common of pasture in Uemanby<sup>3</sup> which he ought to have etc. And thereupon the bishop by his attorney says that, whereas he ought to have common of pasture in one hundred acres of wood, heath (*brusceti*), and moor, with the appurtenances, in the vill of Uemanby, commoning with all

<sup>1</sup> Text from Y (f. 275d).

<sup>2</sup> Mod. Aspatria.

<sup>3</sup> Near Aspatria and now called Allhallows.\*

*Laufer*. [The demandant] was not called [on the third day], so you can assign no default in his person; and for this we vouch the record.

BEREFORD, C.J., to *Willoughby*. Will you hold to this default and abide judgment thereon?

*Willoughby* dared not hold to it, but prayed that the four knights be called.

Note that *Herle* and various other serjeants said that by rigour of law the default was clear.

## 90. CARLISLE (BISHOP OF) v. MULCASTRE.

*Quod permittat* for common of pasture. View granted.

Showeth to you John, Bishop of Carlisle, parson of the church of N., who is here, that Nicholas of N., who is there, wrongfully does not suffer him to have his common pasture in N. appurtenant to his freehold in the same vill, to wit, in one hundred acres of moor and one hundred acres of heath, to common with all manner of animals all the year, as he ought to have: and wrongfully for this reason, that one J., parson of the church of N., this Bishop's predecessor, was seised as of fee and of the right of his church of N. aforesaid in time [of peace], by taking esplees etc.; and that such is his right and the right of his church of N. he has suit and deraign etc.

*Scrope* defended and demanded the view of the tenements to which the common is appendant.

And he had it etc.

### Note from the Record (*continued*).

manner of his beasts through the whole year, and whereas of this common of pasture one Ralph, sometime bishop of Carlisle, parson of the church aforesaid, his predecessor etc., was seised as of the fee and right of his church of Aspatrik in time of peace in the time of King Edward I. taking the esplees thereof to the value etc., the aforesaid Robert deforces him etc. of that common. And that such is the right of his church etc. he offers etc.

And Robert comes by his attorney and demands view thereof. Let him have it. A day is given them at York three weeks from Easter etc. And meanwhile etc.





## APPENDIX.

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### ADDITIONAL NOTES FROM THE RECORD.

No. 1, p. 1.

#### WIKHAM *v.* CIRENCESTER (ABBOT OF).

De Banco Rolls,<sup>1</sup> Easter, 2 Edw. II. (No. 176), r. 73d, Berks.

The sheriff is ordered to take with him four discreet and loyal knights of his county and approach in his own person the hundred of Shryuenham, belonging to Aymer de Valence, John of Wylyngton, and Thomas de Hautrive (*Altaripa*), and in that full hundred to cause to be recorded the cause (*loquela*) which is in the same hundred by the King's little writ of right between William of Wikham of Burghton, demandant, and the Abbot of Cirencester, tenant of one messuage and two virgates of land, with the appurtenances in Burghton<sup>2</sup> by Shryuenham; and to have that record here etc. under his seal and the seals etc. and (to give) to the parties the same day etc. because the Abbot in pleading in the hundred alleged that he held the tenements by the charter of Henry, sometime King of the English, progenitor of the present King, and that he ought not to answer thereof upon (*per*) the said writ. And this charter ought not to be judged in the hundred, wherefore this cause ought not to be brought (*deduci*) in the hundred etc.

And William and the Abbot by their attorneys now come. And the Abbot says that King Henry, the present King's progenitor, gave the land with its appurtenances etc. to one Serlo, sometime abbot of Cirencester, predecessor of the present abbot; and he proffers here the charter in the name of King Henry King of the English, which witnesses that the King gave and granted the church of Scriueham to God and the church of St. Mary of Cirencester in perpetual alms, together with the land and chapel tithes and all customs to the same church pertaining. And [he] says that Burghton where William demands the tenements is a member of Scryueham; and thereupon he says that the tenements now in demand are

<sup>1</sup> The right-hand side of the roll is damaged. The words which are missing or illegible have been supplied from

a duplicate, namely, De Banco Rolls, No. 177, r. 107d.

<sup>2</sup> Mod. Bourton.

contained in the charter, and that the charter ought not to be judged etc. in the hundred.

And William says that the tenements are not contained in the charter ; for he says that they are of the ancient demesne of the crown of England, and that all his ancestors, from a time of which there is no memory, held the tenements as of the ancient demesne of the Crown until the time of Hen. [III.], when [*quod*] one Thomas, the Abbot's predecessor, unlawfully etc. disseised William, the demandant's grandfather, whose heir he is, etc. of the tenements ; and this he is ready to aver as the Court shall award etc. And thereupon he prays judgment etc. A day is given them here for hearing their judgment, the quindene of St. Michael, 3 Edw. [II.], saving to the parties their reasons to be given (*dicendis*) on either side (*hinc inde*) etc.<sup>1</sup>

Afterwards on the quindene of St. Michael the parties came by their attorneys, and the Abbot says that he and all his predecessors from the time of the making of the charter of the King's progenitor etc. till now (*hucusque*) by virtue of the charter etc. held the tenements with the appurtenances as free fee and as land of their church ; and this he is ready to aver. And he prays judgment etc.

And William says that the tenements with the appurtenances are among the appurtenances (*sunt de pertinenciis*) of the manor of Scryuenham (whereof the vill of Burghton is parcel) [and are] of the ancient demesne (*dominico*) of the crown of England and of the lordship (*dominio*) of Aymer, John of Wylyngton and Thomas de Hautrive. And he says that he and all his ancestors from the time of King Henry, the King's progenitor, continuously (*usque continuato*) held the tenements as of the ancient demesne etc. until the time of Hen. [III.], when (*quod*) Thomas, sometime abbot etc. predecessor etc., unlawfully and without judgment as aforesaid disseised William, the grandfather of William (whose heir he is) ; and thereupon he says that the tenements are of the ancient demesne in the form aforesaid and not the land of the church at Scryueham as the Abbot says, and of this he puts himself upon the country. Issue is joined and a *venire facias* awarded for the morrow of St. John the Baptist.

No. 2, p. 4.

#### ARUNDEL (EARL OF) v. CHAUVENT.

De Banco Rolls, Hilary, 3 Edw. II. (No. 180), r. 229d, Sussex.

Edmund FizAleyn, Earl of Arundell, by Robert of Estdene, his attorney, demands against John de Chauvent and Eve, his wife, the manor of Wepham,<sup>2</sup> with the appurtenances, of which John FizAleyn, the great-grandfather of Edmund, whose heir he is, was seised in his demesne as of fee on the day of his death etc.

And John and Eve by Henry of Thurston, their attorney, come ; and they say that the manor was recently in the seisin of one Peter de Chauvent,

<sup>1</sup> The duplicate enrolment ends here.

<sup>2</sup> Near Arundel.

who gave, granted, and by his charter confirmed that manor to John in frank marriage with Eve to hold to John and Eve and the heirs of the bodies of John and Eve lawfully begotten etc. And in that form they vouch to warrant thereof John the son of the said Peter etc.; let them have him here on the quindene of St. John the Baptist etc. by aid of the Court etc. And let him be summoned in the county of Suffolk. At which day the parties came by their attorneys; and the sheriff sent no writ; and John and Eve demand a writ as before etc. Therefore as before the sheriff of Suffolk is ordered to summon John the son of Peter to be here on the quindene of St. Martin etc. The same day is given to the earl by his attorney here etc.

No. 3, p. 4.

GYSE *v.* BAUDEWYNE.

Coram Rege Rolls, Hil., 3 Edw. II. (No. 199), r. 57d, Bedford.

Thomas Baudewyne, Alexander of Skalebrok, Alexander Siregerardeman of Braybrok, Thomas atte Noke, Andrew atte Noke, Thomas of Wendlesworth, and Walter le Pestour of Aylesbery, were attached to answer John de Gyse of a plea wherefore with force and arms they ravished Isabel the wife of John, at Aspele,<sup>1</sup> and abducted her with John's goods and chattels, and from him still detain etc., and other enormities etc.; to the grievous damage etc.; and against the peace etc., and against the form of the statute etc. And thereupon he complains that Thomas and the others on [29 June, 1308] Saturday the feast of the Apostles Peter and Paul 1 Edward [II.] ravished with force and arms John's wife at Aspele, and abducted etc. her with John's goods and chattels to wit, golden belts and rings, cloths of linen and wool to the value of forty pounds etc.; and thereupon he says that he is the worse and has damages to the value of sixty pounds; and thereof he produces suit etc.

And Thomas and the others come and defend tort and force when etc., and all ravishment and whatever is against the peace or the form of the statute etc. And Thomas of Wendlesworth and Walter le Pestour of Aylesber' says that in no way are they guilty of the ravishment or trespass. And Thomas and all the others say that they did not ravish Isabel, the wife of John de Gyse with his goods and chattels etc. as John de Gyse complains above, and of this they put themselves on the country; and John de Gyse likewise. Therefore let a jury thereon come before the King a month from Easter, wheresoever etc., and who neither etc., because both etc.

Afterwards on the octave of St. John the Baptist 3 Edward [II.] John de Gyse came by his attorney and Thomas Baudewyn, Alexander Thomas, and the others brought &c., by the marshall etc.; and likewise the jurors come. And the jurors say upon their oath that Thomas of Wendlesworth and

<sup>1</sup> Aspley Guise, near Woburn.

Walter le Pestur of Aylesbur' are in no way guilty of the trespass ; and that Thomas Baudewyne Alexander of Skalebrok, Alexander Siregeradesman of Braybrok, Thomas atte Noke and Andrew atte Noke, did not ravish Isabel the wife of John with his goods and chattels with force and arms, and against the peace as John complains. Therefore it is awarded that Thomas of Wendelesworth, Walter le Pestour, Thomas Baudewyn, and all the others go thereof quit ; and that John de Gyse take nothing by his writ, but be in mercy for his false claim etc.

#### CICESTRE *v.* MAUNEBY.

Coram Rege Rolls, Mich., 3 Edw. II. (No. 198), r. 84, London.

Ranulph of Mauneby was attached to answer Peter of Cicestre of a plea why with force and arms he ravished Margery, the wife of Peter, at London and carried her away with Peter's goods and chattels, and still detains them from him etc., and other enormities etc., to the grievous damage etc. and against the form of the statute in such a case provided ; and thereupon he complains that Ranulph, together with John de la Roche, Hugh of Wighton, and Alice, his sister, and William of Leycestre, clerk, on [7 April, 1308] Palm Sunday, 1 Edw. II., ravished with force and arms Margery, Peter's wife, at London, to wit, in the parish of St. Lawrence, Candewykstrate, and carried her away with Peter's goods and chattels, to wit, one hundred pounds sterling, a chest, cups of silver and maple (*murro*), woollen and linen cloths and household utensils, and other goods and chattels of Peter's, and still detains them from him ; damages three hundred pounds ; and thereof he produces suit etc.

And Ranulph comes and defends tort and force and whatever is against the statute etc., and says that in no way is he guilty of the ravishment or trespass, and of this he puts himself upon the country. Issue is joined and a jury of twenty-four men, from the wards next to the parish of St. Lawrence, is summoned before the King a month after Easter. Thereupon seven persons came and made themselves mainpernors for Ranulph hearing the inquisition.<sup>1</sup> On that day the jury is respited, and eight other persons made themselves mainpernors for Ranulph. Afterwards on the quindene of St. John the Baptist, 4 Edw. II., Peter by his attorney and Ranulph by his mainpernors and the other defendants come. All the defendants save Ranulph say that Peter ought not to be answered, for by an inquisition in which he had put himself in the King's Court against Margery it had been found that Margery was not Peter's wife, and had never been held for his wife, and they demand judgment. [On the quindene of St. Michael, after a further adjournment, Peter fails to appear and is amerced.]

Ranulph is then asked at the king's suit how he wishes to acquit himself of the ravishment and carrying away of goods, and he says that he is a clerk. The Abbot of Westminster demands him as a clerk by his letters patent ; but in order that it may be known in what capacity (*pro quali*) he should be delivered the truth is to be enquired by the country,

<sup>1</sup> From here this note from the record is abridged. The proceedings relating to the defendants other than

Ranulph are omitted for the sake of brevity.



and meanwhile he is committed to the custody of the marshall. Three weeks after Easter a jury comes and says that Ranulph is in no way guilty of the ravishment etc., or of the carrying away of Peter's goods and chattels, nor was Margery at any time held for Peter's wife. Therefore let Ranulph go without day.

Ibidem, r. 84d, York.

[In another case of trespass which Margery, the widow of Roger of Wighton, brought against Peter of Cicestre and Thomas, his brother, for taking two chests at York, Peter says that Margery is his wife, and in the face of the church was coupled to him in matrimony, and that she was his wife on 5 Nov. 2 Edw. II., the day when the writ was purchased, and that she still is his wife.

Margery says that she is sole, and was sole on 5 Nov. Issue is joined ; and a jury finds that Margery is sole and without a husband, and was so on the day when the writ was purchased, and still is so ; and the jury do not know that Peter at any time married Margery nor that Margery was held for nor acknowledged as Peter's wife in the city of York.]

No. 11, p. 13.

ST. GREGORY, YORK (PARSON OF), *v.* BEDEWYNDE.

De Banco Rolls, Hilary, 3 Edw. II. (No. 180), r. 306, York.

A jury comes to find whether one messuage and four bovates of land in Accun<sup>1</sup> by York were the free alms belonging to the church of St. Gregory of York, whereof John, parson of the church of St. Gregory of York, is parson, or the lay fee of Walter of Bedewynde, treasurer of the church of the Blessed Peter of York etc. ; and thereupon John by John Ithun, his attorney, says that one Theobald le Normaunt, sometime parson of the church, predecessor etc., was seised of the tenements as of the right of his church in time of peace in the time of King Hen. [III.], taking thereof the esplees to the value etc., and this Theobald at that time alienated etc. the tenements.

And Walter comes and says that he holds the tenements as annexed to his treasury in the church of the Blessed Peter of York, and that he found his treasury seised thereof etc. ; and thereupon he says that he cannot bring (*deducere*) those tenements into judgment without the Dean and Chapter of the Blessed Peter of York ; and he seeks aid of the Dean and Chapter etc. And John cannot deny this. Therefore they are summoned to be here on the octave of St. John the Baptist to answer together with etc.

No. 23, p. 26.

BARDOLF *v.* MARESCHAL.

De Banco Rolls, Easter, 3 Ed. II. (No. 181), r. 56.

William le Mareschal and Richard Ingram in mercy for divers defaults. The sheriff is ordered to distrain William and Richard by all the

<sup>1</sup> Acomb, near York.

lands etc., and of the issues etc., and to have their bodies here at this day to acknowledge by what services they hold their tenements of Reynold of Aslacton in Gedelyng, Nethercolwyk and Carleton by Gedelyng,<sup>1</sup> which services Reynold in court here granted to Thomas Bardolf by fine, etc. And now come William and Richard; and they are asked by the justices by what services they hold the tenements and William says that he holds of Reynold four messuages and four bovates of land in the vill of Carleton by fealty only, etc. And Thomas Bardolf says that William le Mareschal held the tenements of Reynold by homage and fealty and the service of ten pence and a halfpenny and a farthing a year and ten pence for each bovat of land for the king's scutage of forty shillings, when it comes (*cum accident*), and for more more, and for less less; of which services Reynold was seised by the hand of William on the day of the acknowledgement aforesaid made thereof to Thomas, and this he is ready to aver etc. And William says that he holds the tenements in the town of Carleton of Reynold by fealty only without (*absque hoc quod*) Reynold or his ancestors ever having been seised of any other services by the hands of William or his ancestors for these tenements. And he prays that this may be inquired by the country. Issue is joined and *venire facias* is awarded for the quindene of St. Michael.

And Richard Ingram says that on the day and year of the acknowledgement he held in the vill of Carleton seven acres of land only jointly with a certain Juliana his wife who is not named in the writ and without whom etc. And he prays judgment etc.

And Thomas says that Richard holds and held of Reynold on the day and in the year when the acknowledgement was made fifteen acres of land by homage, etc., and ten pence for the king's scutage of forty shillings when it comes, and for more etc., solely and by himself and without Juliana his wife having anything in them except only as his wife. And he prays that this may be inquired by the country. Issue is joined as above.

No. 2, p. 29.

#### PETSTEDE v. MARREYS.

Coram Rege Rolls, Mich., 4 Edw. II. (No. 202), r. 30d, Sussex.

William de Marreys of Glynde, William Goldeyeue of Glynde, John Kempe, William Dyne of Okefeld, and Godfrey le Waleys in mercy for divers defaults.

William de Mareys and the others were attached to answer Adam or Petstede and Joan his wife of a plea wherefore whereas a third part of the lands and tenements and the park of Glynde,<sup>2</sup> which belonged to Richard le Waleys, formerly Joan's husband, was assigned to Joan in dower, and Adam and Joan by virtue of the assignment ought to have every third deer which should chance to be taken, and they, William, William, John, William, and

<sup>1</sup> Gedling, Carlton and Colwick are close to Nottingham.

<sup>2</sup> Near Lewes.

Godfrey, entered the park with force and arms, and without the licence and will of Adam and Joan hunted in it and took deer and carried away a third part of those deer and other enormities etc., to the grave loss etc. and against the peace etc. And thereupon he complains that William and the others on Wednesday next before the feast of St. Valentine, 3 Edw. [II.] (11 Feb. 13 $\frac{3}{8}$ ), entered the park with force and arms and without the licence and will of Adam and Joan hunted in it, took deer, and carried away a third part of those deer, to wit, three does : Damages ten pounds. And thereof he produces suit etc.

And William de Marreys and the others come and defend the tort and force, when etc. And they say that they are in no way guilty of the trespass ; and of this they put themselves upon the country. Issue is joined and a *venire facias* awarded *coram rege* for the quindene of Hilary.

No. 3, p. 30.

SCALDEFORD v. VAUDEY.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 111d, Lincoln.

Geoffrey of Scaldeford by William of Exton, his attorney, demands against William the Abbot of Vaudey one messuage and three bovates of land, with the appurtenances in Swynestede<sup>1</sup> as his right and inheritance, and into which the Abbot has no entry unless after the demise which Geoffrey of Scaldeford, father of Geoffrey, whose heir he is, made thereof to Henry the Abbot's predecessor for a term which is past, and which after the term ought to revert to the demandant etc. And thereupon Geoffrey says that Geoffrey his father etc. was seised of the aforesaid tenements as of fee and of right, in time of peace, in the time of Hen. [III.], taking the esplees thereof to the value etc. And from Geoffrey his father etc., the right descended to one Thomas as son and heir etc., and from Thomas, because he died without heir of his body (*de se*), to Geoffrey, the demandant, as brother and heir etc., and into which etc. And thereof he produces suit etc.

And the Abbot by William of Horbling, his attorney, comes and defends Geoffrey's right when etc. and says that Geoffrey can claim nothing in the tenements of the seisin of Geoffrey his father etc. He says that in fact Geoffrey the father etc. sometime demised the tenements to Henry, the Abbot's predecessor etc., to hold for a term of sixteen years, and within this term Geoffrey, the father etc., died. To him succeeded John, son and heir of Geoffrey, the father etc. ; and John by his writing gave, granted, and confirmed and quitclaimed from himself and his heirs to God and the Blessed Mary and the Abbot and convent of Vaudey in free and perpetual alms all the land which Thomas his grandfather and Geoffrey his father had in the aforesaid town with the houses thereon erected without any

<sup>1</sup> Mod. Swinstead.

reservation (*sine ullo retenemento*); to have and to hold unto the monks freely, quietly, well, and in peace for ever. And he granted that he and his heirs etc. would warrant, defend, and acquit all the land before-mentioned with the appurtenances against all men for ever, so that neither he, nor his heirs, nor any one by them or for them could demand any right or have any claim in the land hereafter or move any challenge against the monks thereof. And he proffers here the writing under the name of John which witnesses this etc.; and says that the tenements now in demand are contained in the writing. And thereupon he prays judgment if against the deed of John the ancestor etc. he can claim anything in the tenements etc.

And Geoffrey says that he ought not to be precluded in this behalf from his action by the deed of John etc.; for he says that John was not the son of Geoffrey the father etc., but he was a bastard. And he is ready to aver this as the Court may award; and thereupon he prays judgment etc.

And the Abbot says that John was the son of Geoffrey the father etc. and legitimate and not a bastard; and of this they put themselves on the country.

Issue is joined and a *venire facias* awarded for the quindene of Hilary.

No. 29, p. 129.

#### KEYLMERSH v. KEYLMERSH.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 340, Northants.

Philip the son of Richard the son of Adam le Reve of Keylmerssh and Adam his brother by Simon of Cranesle his attorney demand against John the son of Richard the son of Adam of Keylmerssh two parts of a messuage fifteen acres of land and four acres of meadow with the appurtenances in Keylmerssh as the right and due (*racionabilem*) share etc. which falls to them of the inheritance which was of Richard the son of Adam the father of Philip Adam and John whose heirs they are and who died lately. And thereupon Philip and Adam say that Richard the father etc. was seised of the entirety of the tenements etc. as of fee and of right in time of peace in the time of Henry [III.] taking thereof the esplees to the value etc.; and from Richard the right etc. descended to Philip Adam and John as sons and [one heir] on the ground that the tenements are partible etc. and thereof John holds all etc. and deforces their due share from Philip and Adam. And thereof they produce suit etc.

And John by Thomas of Snypton his attorney comes and defends the [demandants'] right when etc.

Afterwards at the request of the parties a day is given them before the justices at York three weeks from Easter in the same state in which they now are without essoin.



No. 35, p. 138.

CARDEVILL *v.* TRENCHFOIL.

I.

De Banco Rolls, Trinity, 3 Edw. II. (No. 182), r. 219d, Wilts.

Joan, the widow of Thomas de Cardevill, by her attorney offered herself on the fourth day against John Trenchefoil and Juliana, his wife, of a plea of a third part of a third part of a hide of land, with the appurtenances, in Hodestone<sup>1</sup> and Wynthorp,<sup>2</sup> which she claims in dower etc. And they do not come; and they made default heretofore to wit on the morrow of the Ascension last past, so that the sheriff was then ordered to take the said third part into the king's hand etc., and the day etc., and that he summon them at this day etc. And the sheriff now witnesses the day of the taking, and that he summoned etc. And upon this comes the Abbot of Hyde and says that John and Juliana have nothing in the tenements save in the name of Juliana's dower, and that the reversion of the tenements belongs to the Abbot by the feoffment and grant of one Agnes the daughter and heiress of Thomas. And he proffers Agnes's charter, which witnesses that Agnes granted, remitted, and surrendered into the hands of her lord, the Abbot of Hyde and the convent of the same place, all her lands and tenements in Cardeuileswyk, and in all places in the parish of Cheseldene, with the appurtenances etc.; she granted also to the Abbot and convent and their successors all the lands and tenements which Juliana, Agnes's mother, holds in dower in the aforesaid places when [the dower] shall fall in (*acciderit*). And he says that the tenements of which Joan now seeks her dower are the same tenements as those which Juliana now holds in dower etc. And this Juliana attorned thereof by the assignment to Agnes etc. And for that reason the right of the reversion of the dower belongs to the Abbot. And he prays that the default of John and Joan be not prejudicial to him, but that he be admitted to answer etc.

And Joan says that the Abbot ought not to be admitted in this behalf, and cannot claim anything in the reversion of the tenements by Agnes's grant; for she says that Agnes after the death of Thomas, her father, whose heir she is, was seised of the tenements whereof the aforesaid Thomas, the father etc. died seised, and of those tenements enfeoffed one John de Cardevill a long time before the making of the charter which the Abbot proffers etc. And this John de Cardevill assigned to Juliana the tenements whereof dower is sought to hold in the name of dower, so that the reversion of the dower belongs to John de Cardevill etc.

And the Abbot says that John de Cardevill never was seised of the tenements as of his own right, but only in the name of the wardship of Agnes, who was in his wardship by reason of proximity of blood etc. And Agnes afterwards, when of full age, granted to the Abbot the reversion<sup>3</sup> of the

<sup>1</sup> Hodson in Chisledon.

<sup>2</sup> Wynthorp is perhaps a clerical error for the place now called Burdrop.

<sup>3</sup> On 22 July, 1306, the Abbot

and convent of Hyde by Winchester were pardoned for acquiring in mortmain from Agnes de Cardeville a mesuage, two virgates of land, an acre of

dower, as the charter witnesseth, having afterwards obtained the King's licence for the appropriation, so that on the day of the making of the charter, to wit [23 January, 1306], the Sunday before the feast of the Conversion of St. Paul, 34 Ed. [I.], the reversion of the dower belonged to Agnes, and not to John de Cardevill, as Joan says, and of this he puts himself on the country.

Issue is joined and a *venire facias* awarded here for a month from Michaelmas. And upon this Edmund of Passely, of the county of Kent, John of Westcote, Roger of Preslond, Thomas of Whelton, and Thomas de Mareys, of the county of Southampton, and Ralph of Huntingdon, of the county of Huntingdon,<sup>1</sup> were manucaptors for the Abbot, answering of the issues etc. in the mean time, to wit, from this day till the day when the jury between them shall pass, if it happen that the jury pass against [him].

Afterwards at that day Joan came by her attorney ; and the Abbot did not come. And Joan prayed judgment upon the preceding default of John and Juliana, and that seisin be adjudged to her. And because the Abbot now comes not nor sues to avow (*prosequitur ad verificandum*) what he had before offered to delay (*in retardacionem*) the seisin then to be awarded to Joan, there is process to judgment upon the preceding default, and it is awarded that Joan recover her seisin thereof against them by default, and that John and Juliana be in mercy. And let the sheriff enquire of the issues in the meantime etc.,<sup>2</sup> to wit, from the morrow of the Ascension until a month from Michaelmas. And let him cause the inquisition to be made known here on the quindene of St. Martin.

## II.

Ibidem, r. 133d, Wilts.

Joan, the widow of Thomas de Cardevill, by her attorney demands against the Abbot of Hyde by Winchester a third part of one messuage, one acre and a half of land, and six acres of meadow, six acres of wood, and nine shillings of rent, and two parts of a hide of land in Hodeston and Byrithrop as her dower etc.

And the Abbot by his attorney comes and says that she ought not to have her dower thereof, because he says that the same Joan after the death of her husband was endowed of six bovates of land with the appurtenances in Netherworton,<sup>3</sup> in the same county, in allowance of all her dower falling to her from the free tenement which was of her husband, and she was seised thereof, and held herself content etc. And this he is ready to aver and he prays judgment etc.

And Joan says that she received no tenements in allowance of her dower falling to her from the tenements in the aforesaid villis ; and she prays that this may be enquired by the country.

wood, and two shillings of rent in Cheselden (*Calendar of Patent Rolls*, 1301-1307, p. 458).

<sup>1</sup> It will be observed that several of these manucaptors were serjeants.

<sup>2</sup> Words which appear to be 'et eciam

si uir obiit seisitus inde dampna etc.' are here interlineated. A widow was entitled to damages if her husband had died seised of the lands, which she recovered in dower, but not otherwise.

<sup>3</sup> Part of Wroughton in Wiltshire.

Issue is joined and a *venire facias* awarded here for a month from Michaelmas.

Afterwards on the octave of the Purification of the Blessed Mary came the Abbot by his attorney and likewise the jurors. And Joan did not sue. Therefore it is awarded that the Abbot go without day and Joan and her pledges of suing be in mercy etc.

### III.

*Ibidem*, Mich., 4 Edw. II. (No. 183), r. 355, Wilts.

The jury between Joan, the widow of Thomas de Cardevill, demandant, and the Abbot of Hyde by Winchester, tenant of a plea of dower, is respited until the octave of the Purification of the Blessed Mary for want of jurors, because none came. Therefore let the sheriff have the bodies etc.

No. 36, p. 140.

### INGELOSE *v.* SPYTLING.

*De Banco Rolls*, Mich., 4 Edw. II. (No. 183), r. 155d, Norfolk.

Heretofore at Norwich before W. of Ormesby, J. of Thorpe, and R. Baynard, justices assigned to take assizes in the county of Norfolk on [23 July, 1310] Thursday, the morrow of St. Mary Magdalene, in A.R. 4, an assize came to find if Roger Spytling and Agnes his wife and William, the son of Roger Spytling and Alice, the sister of the same William, John Tokyn of Thweyt, and John le Whyte unlawfully etc. disseised Thomas, the son of Ralph of Ingelose, of his free tenement in Sislonde<sup>1</sup> since the first etc. And thereof he complains that they disseised him of one messuage with the appurtenances etc.

And Roger and John Tokyn come and the others come not; but the aforesaid Roger answers for them as their bailiff; and said for them that they have nothing in the messuage and they did no tort nor made disseisin; and of this they put themselves upon the assize etc. And for himself as tenant etc. he says that he entered in the messuage by John Tokyn and not by disseisin etc., and he vouches John as a warrant thereof who freely warranted to him and said nothing whereby the assize should stand over. Therefore let the assize be taken.

The jurors said upon their oath that one Ralph of Ingelose, Maud of Brundale, John the son of the same Maud, and Thomas, the brother of the same John, purchased the messuage from one John Galt to hold to the same Ralph, Maud, John, and Thomas and the heirs and assigns of John and Thomas; and they said that after the death of Ralph and Maud, Thomas, then of the age of sixteen years, by his writing released and quitclaimed to John, his brother, all the right and claim which he had in the messuage, and immediately afterwards went to Yarmouth in service there; and there he

<sup>1</sup> Mod. Sisland.



tarried; but within three weeks he returned on the ground that he had heard from many that John, his brother, intended to alienate the messuage, and he entered on the aforesaid messuage. And they said that John, his brother, now deceased, afterwards enfeofed John Tokyn of the messuage and gave him his charter of feoffment thereof and delivered him seisin thereof. And John le Whyte being in the service (*in comitiua*) of the same John Tokyn ejected (*amouit*) Thomas, who was then in the messuage. And they said that the messuage is worth twenty pence a year.

A day was given then here to hear judgment to-day, that is to say, the quindene of St. Michael etc.

And now came as well Thomas as John Tokyn and Roger, and the others (came) by John Tokyn, their bailiff etc. And it is awarded that Thomas recover against Roger his seisin of a moiety of the messuage with appurtenances by view of the recognitors etc.; and Roger have the equivalent from the land of John Tokyn; and likewise that Thomas recover against them and John Whyte his damages which are taxed by them at six shillings and eight pence. And Roger and John Tokyn and John Whyte are in mercy. And Thomas is in mercy for his false claim against the others; but the amercement of Thomas is pardoned by the Justices because he is within age etc.

Damages, six shillings and eight pence.

No. 41, p. 147.

#### LAURENCE v. GERMEYN.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 61, Rutland.

Richard, the son of Thomas Laurence, offered himself the fourth day against William Germeyn of a plea that he, together with Agnes his wife, should render to him a messuage and a bovaté of land with the appurtenances in Bergh<sup>1</sup> which he claims as his right etc. against William and Agnes etc. And he did not come; and as well William as Agnes heretofore made default here in court, to wit, three weeks after Easter last past after they appeared in court etc., so that the sheriff was then ordered to take the tenements into the King's hand, and to summon them that they be here at this day, to wit, on the quindene of St. Michael to hear judgment thereof etc. And the sheriff now witnesses that the land has been taken etc.; and the summons has been witnessed etc. And upon this Agnes comes and says that the tenements are her right etc. And she prays that she do not lose her tenements by her husband's default, since she is ready to answer thereof to the plaintiff, but that she may be admitted etc. And she is admitted etc.

And Richard demands against her the tenements with their appurtenances as her right etc.; and in which William and Agnes have not entry unless by Lawrence le Gardener, formerly the husband of Clemence of Alsthorp,

<sup>1</sup> Barrow, near Market Overton.



grandmother of Richard, whose heir he is, who demised them to her, whom she in his lifetime could not gainsay etc. And thereupon he says that Clemence, his grandmother etc., was seised of the tenements with the appurtenances in his demesne as of fee and of right in time of peace in the time of King Edward [I.], taking the esplees thereof to the value etc.; and from Clemence descended the right to one Thomas as son and heir etc.; and from Thomas to Richard the demandant as son and heir etc.; and in which etc. And thereof he produces suit etc.

And Agnes says that Richard can claim no right in the tenements on the seisin of Clemence through (*per medium*) Thomas etc., because, she says, Thomas was a bastard etc.; and thereupon she prays judgment.

And Richard says that Thomas was legitimate and held for legitimate etc., and not a bastard as Agnes says. And he demands that this may be enquired by the country. Issue is joined and a *venire facias* awarded for the quindene of Hilary; and Agnes puts in her place William of Exton or John of Luffewyke.

Afterwards on the quindene of Trinity, 4 Edw. II., the parties came by their attorneys and likewise the jurors chosen by the consent of the parties who say upon their oath that Thomas was legitimate and born within the espousals. Therefore it is awarded that Richard recover his seisin thereof against Agnes, and that Agnes be in mercy etc.

No. 48, p. 150.

#### DEWE v. HOWARD.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 143d, Norfolk.

Margaret, who was the wife of Roger Dewe of Lenne Episcopi, by her attorney demands against Alice, who was the wife of William Howard, ten acres of land with the appurtenances in Sadelbowe<sup>1</sup>; and against Robert of Lakenham of Lenne Episcopi six acres of land with the appurtenances in the same town as her right of the gift of Robert of Bram, who enfeoffed Margaret thereof; and into which Alice and Robert have no entry unless by Roger Dewe, formerly the husband of the aforesaid Margaret, who demised the tenements to them, whom she in his lifetime could not gainsay etc.

And Alice and Roger come by their attorney; and they say that they ought not to answer her on this writ etc.; for they say that whereas Margaret supposes by her writ that the tenements are in the vill of Sadelbowe, Sadelbowe is not a vill but a hamlet of the vill of Wygenhale etc. And this they are ready to aver; and they pray judgment of the writ etc. And Margaret cannot deny this etc. Therefore let Alice and Robert go without day; and Margaret take nothing but be in mercy etc.

<sup>1</sup> Mod. Saddle Bow, three miles south of King's Lynn.

No. 48, p. 155.

CLERK *v.* MUSTREL.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 286, Lincoln.

Alice, the widow of William le Clerk by William of Foletby, her attorney, demands against William Mustrel of Wolyngham one toft with the appurtenances in Wolyngham<sup>1</sup> next Benyngworth as her right of the gift of Ellen of Wolyngham, who enfeoffed Alice thereof, and into which the same William had no entry unless by Robert Mustrel, to whom William le Clerk, formerly the husband of Alice, demised it, whom she in his lifetime could not gainsay etc.

And William by Nicholas of Welton, his attorney, comes, and he had heretofore vouched to warrant John, the son of William le Clerk of Wolyngham, who now comes by summons by Richard of Bolingbroke, his attorney, and prays that it may be shown to him by what he ought to warrant to him etc.

And William says that Robert Mustrel, the father of William, whose heir he is, gave to William le Clerk one messuage ten acres of land and five acres of meadow with the appurtenances in the aforesaid town in exchange for the toft; and John succeeded William in the tenements as his son and heir; and thereupon he says that John by that exchange is seised of these tenements, and for that reason is bound to warrant to him the toft etc.

And John says that by the exchange he ought not to warrant to him; for he says that Robert the father of William Mustrel did not exchange the messuage land and meadow with William le Clerk, John's father, for the toft now in demand; nor is John seised by that exchange of those tenements as William Mustrel says; and of this he puts himself upon the country. Issue is joined and a *venire facias* awarded for the quindene of Hilary.

No. 55, p. 169.

GOUTHORP *v.* SKETE.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 386d, Norfolk.

Ralph (Ranulphus) Skete, Peter le Monek, junior, Robert Sket, John of Ingham of Norwich, and Roger Waryn are in mercy for divers defaults.

The same Ralph (Radulphus) and the others were attached to answer Emma, the widow of John of Gouthorp of Norwich, of the plea why with force and arms they ravished and carried away, against Emma's will and against our peace, Stephen, the son and heir of John of Gouthorp, who is within age and whose marriage belongs to Emma, and who was found at Norwich. And thereupon Emma by Peter of Hakeford, her attorney, complains that (whereas John the father of the heir held of William de Corzoun one messuage and five acres of land with the appurtenances in Swerdeston and

<sup>1</sup> Willingham, near Benniworth.

Carleton<sup>1</sup> by homage and fealty and by the service of doing sevenpence for the King's scutage of forty shillings when it occurs and for more, more, and for less, less; of which homage and fealty and service William was seised by the hands of John the father etc.; and [John] died seised in the homage of William, and this William after the death of John by reason of the minority of the heir was seised etc. of the same heir and granted and sold the wardship and marriage of the heir to Emma; and by virtue of (*pretextu*) this grant and sale Emma was seised of the aforesaid heir thus within age (and for that reason the marriage of the same heir belongs to Emma)—Ralph (Ranulphus) and the others on [4 November 1307] the Saturday next after the feast of All Saints in 3 Edw. [II.] ravished and carried away with force and arms the heir found at Norwich, to wit, with swords, bows, and arrows, against Emma's will and against the peace etc.; damages one hundred pounds. And thereof she produces suit.

And Ralph and the others come and defend the tort and force when etc. And they say that they ought not to answer her, on this writ, because they say that such a writ of heirs who are within age etc. ravished and carried away is available for plaintiffs according to the form of the statute last published at Westminster, in which it is contained that he who has ravished and carried away such an heir shall be attached to answer the plaintiff why he ravished and carried away such an heir who was within age found at such a town whose marriage belongs to the plaintiff against his will and against the peace etc. And as the writ does not agree with the form of the same statute, especially since *vi et armis* is inserted in the same writ, varying from the form of the aforesaid statute, he prays judgment. of the writ etc. A day is given them here on the quindene of Hilary in the same state as now etc. And John of Morleye, the bailiff of the liberty of the city of Norwich, by whom the heir was brought here, is told to have him here on that day, to deliver to whom etc.

Afterwards on that day the parties have a day here the quindene of Trinity by essoign etc. as appears elsewhere. And John of Morleye has not the heir here as was enjoined him. Therefore the sheriff is ordered to distrain John etc. to have the heir here at the aforesaid term, etc. to deliver etc.

No. 56, p. 170.

# ROBERTSBRIDGE v. ECHINGHAM.

## I.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 129, Sussex.

William of Echingham was summoned to answer the Abbot of Robertsbridge (*de Ponte Roberti*) of a plea that he hold to him the covenant between them made of one acre of land with the appurtenances in Salhurst and the advowsons of the churches of Salhurst, Odimere, and Mundefeld<sup>2</sup> etc.

<sup>1</sup> Swardeston and East Carleton are near Norwich.

<sup>2</sup> Salehurst, Udimore, and Mountfield.

And now come as well William as the Abbot, and as to the advowsons they are agreed. And the Abbot offers to the king one hundred shillings for licence to agree. And upon this the Abbot proffers here the King's letters patent,<sup>1</sup> which witness that for the very great damage and irrecoverable loss of the lands and tenements which the Abbot and convent have sustained and still sustain by reason of the inundations of the salt water on the marshes of Wynchelse, Rye, and Promhull,<sup>2</sup> by the sea coast, the King has granted to them by his letters patent, and on behalf of himself and his heirs in so far as in him lies has given licence to William that he may give and assign to the Abbot and convent the aforesaid advowsons (which churches are worth five hundred marks etc.), to have and to hold to them and their successors for ever; and to the Abbot and convent that they may receive and have, as is aforesaid, the advowsons, and appropriate the churches to them and their successors, to possess for their own uses for ever, the statute published of not putting lands and tenements into mortmain notwithstanding. He proffers also the King's letters close directed to his justices here, whereby the King sent word to them that on account of the statute published of lands and tenements not being put into mortmain they do not fail to permit the fine thereof between the parties here in the bench to be levied according to the law and custom of the King's realm etc. Therefore the fine is admitted and they have their chirograph by John of Westcote counter etc.

## II.

Feet of Fines, Case 236, File 42, No. 10, Sussex.

Between Lawrence Abbot of the Church of the Blessed Mary of Robertsbridge, plaintiff, and William of Echingham, deforciant, of the advowsons of the churches of Salhurst, Odymere, and Mundefeld,<sup>3</sup> whereupon a plea of covenant was summoned between them in the same court, to wit, that William acknowledged the advowsons to be the right of the Abbot and his church of the Blessed Mary as those which the Abbot has of the gift of William; to have and to hold to the Abbot and his successors and the church of the Blessed Mary of the chief lords of that fee by the services which to those advowsons pertain for ever. And furthermore William granted for himself and his heirs that they will warrant to the Abbot and his successors and the church of the Blessed Mary the advowsons against all men for ever. And for this acknowledgment, warranty, fine, and concord the Abbot received William in all and singular the orisons and benefits (*oracionibus et beneficiis*) which should be made hereafter in the church of the Blessed Mary for ever.

<sup>1</sup> The letters patent were dated 1 March, 1309 (*Cal. Pat. Rolls*, 1307-1313, p. 152).

<sup>2</sup> Mod. Broomhill.

<sup>3</sup> See note 2 on p. 217.



No. 58, p. 173.

PASSELEYE *v.* AUDELEYE.

I.

De Banco Rolls, Mich., 4 Edw. II. (No. 183), r. 355, Sussex.

Edmund of Passeleye gives half a mark for licence to agree with James of Audeleye on a plea of covenant of the manor of Farleye with the appurtenances. And they have the chirograph by John of Westcote counter etc.

II.

Feet of Fines, Case 236, File 42, No. 11.

Between Edmund Passeleye, plaintiff, and James of Audeleye, deforciant, of the manor of Farleye,<sup>1</sup> with the appurtenances, whereupon a plea of covenant was summoned between them in the same Court, to wit, that James acknowledged the manor with its appurtenances to be the right of Edmund; and that he has rendered to him in the same Court to have and to hold to Edmund and his heirs of the chief lords of that fee by the services which to that manor pertain for ever. And furthermore James granted for himself and his heirs that they will warrant to Edmund and his heirs the manor with its appurtenances against all men for ever. And for this acknowledgment, render, warranty, fine, and concord Edmund gave to James two hundred pounds sterling.

<sup>1</sup> Fairlight, near Hastings.

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*Semble* that a wife not named in the writ cannot be received on the ground that she holds jointly with her husband who has made default.

19. *Horkesley v. Power* . . . . 86

A tenant (A.) is suffered to plead that on the day of the writ purchased H. held a third of the tenements, A. having produced a deed showing that since then H. enfeoffed A. and A.'s wife, who is not being sued.

20. *Bishopsgate (Prior of) v. Haben-hache* . . . . 91

Avowry for suit of court. *Qu.* whether the assign of a feoffee can, against the assign of a feoffor, rely on a charter of feoffment reserving no suit, if the seisin of the suit is confessed. *Qu.* whether between the assigns of feoffor and feoffee the rule laid down by Stat. Marl. c. 9



can be enforced in an action of replevin. If a lord obtained seisin of an undue suit from a prior, this can only burden the house during that prior's time.

**21. Ryde v. Tregoz . . . . . 95**

Avowry for relief alleging seisin of a proportionate scutage ever since the time limited for an avowry by Stat. Westm. I. c. 39 and Stat. Westm. II. c. 2. To this a deed showing that less scutage was due would be no answer even between privies. Stat. Marl. c. 9 does not apply, for relief is not a service.

**22. Mouncey v. Narford . . . . . 100**

Replevin: writ to the wrong sheriff, the beasts having been driven from one county to another.

**23. Barking (Abbess of) v. Lettle . . . 101**

A doweress to whom a manor has been assigned can avow upon a tenant of the manor, laying seisin of the services in her husband and not alleging an attornment.

**24. Walding v. Fairfax . . . . . 104**

*Qu.* whether *quod ei deforciat* will lie against the feoffee of the recoveror.

**25. Durant v. Cogan . . . . . 110**

Avowry for amercement at view of frankpledge, alleging avowant lord of a manor with view of all residents in the manor, of whom plaintiff is one. *Semble* 'not resident within your view' is a good traverse.

**26. Sampson v. Grene . . . . . 112**

The old writ of entry on alienation by a guardian can no longer be brought, as Stat. Westm. II. c. 25 has given an assize.

**27. Knowille v. Plukenet . . . . . 115**

Cosinage by *A.* against *B.* on the death of *X.*, a tenant in chief. Can *B.* plead as an estoppel a judgment of the King's Bench ordering seisin to be given to *B.* as *X.*'s heir, he having been found heir by a jury on which *A.* and *B.* had put themselves in proceedings begun by a *diem clausit extremum*?

The power of the King's Bench to entertain an action and take a verdict without the warrant of an original writ discussed.

**28. Berneval v. Chavent . . . . . 126**

To an assize of novel disseisin a consuance by fine with warranty to the defendant is pleaded, with an allegation that the plaintiff is the consor's heir. Is it a good reply that the plaintiff is not heir?

**29. Keylmerssh v. Keylmerssh . . . 129**

In a *nuper obiit* a plea that since the ancestor's death the demandant has answered as tenant is not equivalent to a plea of 'last seisin.'

**30. Rungefer v. Latimer . . . . . 130**

Mesne. *D.* holds of *C.* in *X.* and *Y.*; *C.* holds of *B.* in *Y.* and of *A.* in *X.*; *D.* is distrained by *A.* in *X.* His writ against *C.* should mention both villis.

**31. Ramesden v. Arnald . . . . . 135**

Entry against two: one makes default; the other is received to defend for the whole; a view refused.

**32. Anon. . . . . 136**

Suit of mill. View refused.

**33. Anon. . . . . 136**

No action of waste against a bailiff.

**34. St. Andrew v. Stretle . . . . . 137**

Debt. Executors are received to deny that a release is their testator's deed.

**35. Cardevile v. Trenchefoil . . . . . 138**

An intervener cannot essoign himself or appear by attorney before he has been received, though he has already pleaded to issue on a question of fact.

**36. Ingelose v. Spytling . . . . . 140**

Two joint tenants: one under age released to the other. It was adjudged an utterly void release.

**37. Shineholt v. Maldus . . . . . 142**

*Mortdancestor* against husband and wife. On the husband's default the wife may be received although the assize has not yet passed, and also although a default by husband and wife has been recorded.

**38. Stirkland v. Ward . . . . . 144**

A demandant may have a view though he has already had one in a

previous action, if that action failed on a plea in bar, not a plea in abatement.

39. *Anon.* . . . . 145

Assignment of a reversion without specialty.

40. *Wolfe v. Martone* . . . . 145

Payment is no answer to a demand of debt by specialty.

41. *Laurence v. Germeyn* . . . . 147

When the existence of a nearer heir is pleaded, the reply should be 'bastard,' and not merely 'born before wedlock.'

42. *Bukenham v. Payn* . . . . 148

Formedon for heirs of different generations.

43. *Dewe v. Howard* . . . . 150

Writ of *cui in vita* abated for not naming a vill.

44. *Anon.* . . . . 150

Debt. Husband alone sues on specialty made to him and wife.

45. *Anon.* . . . . 151

Fine. A married woman refuses consent on examination.

46. *Saundureville v. Sale* . . . . 151

Cosinage. Existence of a direct heir asserted and denied. Venue.

47. *Kembeare v. Kembeare* . . . . 153

Avowry upon tenant for life by grantee of reversion, producing deed of grant. An averment of joint tenancy not allowed.

48. *Clerk v. Mustrel* . . . . 155

Warranty by reason of exchange. Equality.

49. *Anon.* . . . . 156

Damages not given on a recovery by default.

50. *Anon.* . . . . 157

Attornment by paying rent without fealty.

51. *Venour v. Blund* . . . . 157

*Semble* that the rule laid down by Stat. Marib. c. 9 can be asserted by the heir of the feoffee against a purchaser of

the services who avows for suit of Court, notwithstanding seisin of the suit.

52. *Anon.* . . . . 163

Fine involving creation of a rent charge.

53. *Anon.* . . . . 164

Writ not abated by a plea of joint feoffment without specialty.

54. *Willoughby v. Queneby* . . . . 165

Formedon in descender. Demandant suffered to aver gift in tail against tenant, who produces charter of the alleged donor. Tenant in tail cannot have aid of his issue.

55. *Gouthorp v. Skete* . . . . 169

Ravishment of ward brought by guardian *de facto*.

56. *Robertsbridge (Abbot of) v. Echingham* . . . . 170

Fine of advowsons in gross.

57. *Latimer v. Latimer* . . . . 170

A parson deprived by the bishop is restored by the Pope. *Qu.* the effect that this has on the rights of parceners entitled to present by turns.

58. *Passeleye v. Audeleye* . . . . 173

Conveyance of a manor by fine.

59. *Porteseye v. Haustede* . . . . 173

In an action touching realty, if a husband has aid of his wife, a writ to summon her is necessary.

60. *Anon.* . . . . 175

Aid for the defendant in replevin.

61. *Anon.* . . . . 175

Replevin. Aid of wife. Essoin.

62. *Anon.* . . . . 176

The tenant's wife is received, though not named in the writ, as she produces a fine, showing joint tenancy with her husband.

63. *Ricard v. Mundrushe* . . . . 177

*Cui in vita.* Tenant pleads entry by gift of wife while sole and produces her charter with a clause of warranty. He is driven to accept an averment that he entered not by the charter but by the husband's alienation.

## 64. Anon. . . . . 179

A plea that two places named in a writ are but one vill comes too late after view demanded.

## 65. Bele v. Scaldeford . . . . 180

Novel disseisin. Plea that the alleged disseisin was the execution of a judgment in an action of dower.

## 66. Anon. . . . . 182

Novel disseisin. A plea of entry under a fine drives the plaintiff to show later title.

## 67. Taylor v. Blowe . . . . . 182

Cosinage. An attempt to use a stranger's charter as a bar fails.

## 68. Anon. . . . . 183

Voucher to warranty; the voucher is counterpleaded. The demandant is suffered to waive the voucher and plead in abatement of the writ.

## 69. Thoreway v. Neel . . . . . 184

A feoffee who has become the feoffor's heir is deemed to be in by inheritance.

## 70. Anon. . . . . 185

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## 71. Cawood v. York (Archbishop of) . 185

It is not law that a tenant cannot demand woodland against his lord.

## 72. Anon. . . . . 186

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## 73. Balun v. Mortimer . . . . . 187

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## 74. Anon. . . . . 188

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## 75. Abraham v. Abraham . . . . 188

Entry *ad terminum*. Husband cannot demise to wife.

## 76. Hoese v. Quappelade . . . . 190

Writ within the degrees. Voucher of the assignee of the heir of one named in the writ.

## 77. Anon. . . . . 194

On the default of one co-tenant the others are allowed to defend for the

whole, though the demandant asserts that the defaulter holds a share.

## 78. Blakevill v. Osegodeby . . . 192

Formedon. Gift by husband and wife alleged. To traverse gift by wife is insufficient.

## 79. Anon. . . . . 192

Dower. An exchange pleaded.

## 80. Baxtere v. Baxtere . . . . . 192

Two are sued jointly. One makes default. The other asserts sole tenure and desires to defend the whole. The assertion cannot be traversed.

## 81. Broke v. Taylard . . . . . 194

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## 83. Anon. . . . . 195

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## 87. Somery v. Burmingeham . . . 198

Debt. A writ in the *debet* against the heir upheld.

## 88. Hotot v. Rychemund . . . . . 199

Debt on specialty with averment of a performed condition. Wager of law excluded. *Volenti non fit iniuria*.

## 89. Anon. . . . . 200

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## R U L E S .

1. The Society shall be called the Selden Society.

2. The object of the Society shall be to encourage the study and advance the knowledge of the history of English Law, especially by the publication of original documents and the reprinting or editing of works of sufficient rarity or importance.

3. Membership of the Society shall be constituted by payment of the annual subscription, or, in the case of life members, of the composition. Form of application is given at the foot.

4. The annual subscription shall be £1. 1s., payable in advance on or before the 1st of January in every year. A composition of £21 shall constitute life membership from the date of the composition, and, in the case of Libraries, Societies and corporate bodies, membership for 30 years.

5. The management of the affairs and funds of the Society shall be vested in a President, two Vice-Presidents, and a Council consisting of fifteen members, in addition to the *ex officio* members. The President, the two Vice-Presidents, the Literary Director, the Secretary, and the Hon. Treasurer shall be *ex officio* members. Three shall form a quorum.

6. The President, Vice-Presidents, and Members of the Council shall be elected for three years. At every Annual General Meeting such one of the President and Vice-Presidents as has, and such five members of the Council as have served longest without re-election, shall retire.

7. The five vacancies in the Council shall be filled up at the Annual General Meeting in the following manner: (a) Any two Members of the Society may nominate for election any other member by a writing signed by them and the nominated member, and sent to the Hon. Secretary on or before the 14th of February. (b) Not less than fourteen days before the Annual General Meeting the Council shall nominate for election five members of the Society. (c) No person shall be eligible for election on the Council unless nominated under this Rule. (d) Any candidate may withdraw. (e) The names of the persons nominated shall be printed in the notice convening the Annual General Meeting. (f) If the persons nominated, and whose nomination shall not have been withdrawn, are not more than five, they shall at the Annual General Meeting be declared to have been elected. (g) If the persons nominated, and whose nomination shall not have been withdrawn, shall be more than five, an election shall take place by ballot as follows: every member of the Society present at the Meeting shall be entitled to vote by writing the names of not more than five of the candidates on a piece of paper and delivering it to the

Hon. Secretary or his Deputy, at such meeting, and the five candidates who shall have a majority of votes shall be declared elected. In case of equality the Chairman of the Meeting shall have a second or casting vote. The vacancy in the office of President or Vice-President shall be filled in the same manner (*mutatis mutandis*).

8. The Council may fill casual vacancies in the Council or in the offices of President and Vice-President. Persons so appointed shall hold office so long as those in whose place they shall be appointed would have held office. The Council shall also have power to appoint Honorary Members of the Society.

9. The Council shall meet at least twice a year, and not less than seven days' notice of any meeting shall be sent by post to every member of the Council.

10. There shall be a Literary Director to be appointed and removable by the Council. The Council may make any arrangement for remunerating the Literary Director which they may think reasonable.

11. It shall be the duty of the Literary Director (but always subject to the control of the Council) to supervise the editing of the publications of the Society, to suggest suitable editors, and generally to advise the Council with respect to carrying the objects of the Society into effect.

12. Each member shall be entitled to one copy of every work published by the Society as for any year of his membership. No person other than an Honorary Member shall receive any such work until his subscription for the year as for which the same shall be published shall have been paid. Provided that Public Libraries and other Institutions approved by the Council may, on agreeing to become regular subscribers, be supplied with the past publications at such reduced subscription as the Council may from time to time determine.

13. The Council shall appoint an Hon. Secretary and also an Hon. Treasurer and such other Officers as they from time to time think fit, and shall from time to time define their respective duties.

14. The funds of the Society, including the vouchers or securities for any investments, shall be kept at a Bank, to be selected by the Council, to an account in the name of the Society. Such funds or investments shall only be dealt with by a cheque or other authority signed by the Treasurer and countersigned by one of the Vice-Presidents or such other person as the Council may from time to time appoint.

15. The accounts of the receipts and expenditure of the Society up to the 31st of December in each year shall be audited once a year by two Auditors, to be appointed by the Society, and the report of the Auditors, with an abstract of the accounts, shall be circulated together with the notice convening the Annual Meeting.



16. An Annual General Meeting of the Society shall be held in March 1896, and thereafter in the month of March in each year. The Council may upon their own resolution and shall on the request in writing of not less than ten members call a Special General Meeting. Seven days' notice at least, specifying the object of the meeting and the time and place at which it is to be held, shall be posted to every member resident in the United Kingdom at his last known address. No member shall vote at any General Meeting whose subscription is in arrear.

17. The Hon. Secretary shall keep a Minute Book wherein shall be entered a record of the transactions, as well at Meetings of the Council as at General Meetings of the Society.

18. These rules may upon proper notice be repealed, added to, or modified from time to time at any meeting of the Society. But such repeal, addition, or modification, if not unanimously agreed to, shall require the vote of not less than two-thirds of the members present and voting at such meeting.

*July 1901.*

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